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James M. Buchanan and David I. Fand

MONETARY MALPRACTICE: INTENT, IMPOTENCE, OR INCOMPETENCE?

Monetary policy prior to, during, and following the 1990–1991 recession was the tightest and most restrictive in over 30 years. Some have suggested that this policy was explicitly designed by the monetary hawks on the Federal Reserve to wring out the residues of inflationary expectations; others, that the central bank could not offset the real, and powerful, negative shocks buffeting the American economy. But a better explanation is that the monetary authorities were passive because they failed to appreciate the treacherous financial weather caused by new capital requirements and the massive bailout of insolvent institutions.

Departures from normal and expected rates of change in monetary aggregates can generate real economic effects on production, employment, and output. This statement can be accepted by all economists, whether monetarist, Austrian, Keynesian, Post Keynesian, or neoclassical. There is, for example, little or no quarrel with the claim that the sharp recession in 1981–1982 was caused by deliberately motivated monetary restriction imposed by Paul Volcker's Federal Reserve, action aimed at reducing the dangerous inflationary pressures that had been allowed to build up in the late 1970s.

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James M. Buchanan, who received the Nobel Prize in Economics in 1986, is advisory general director of the Center for the Study of Public Choice, George Mason University, Fairfax, VA 22030, fax (703) 993–2323. David I. Fand, a research associate at the Center, formerly professor of economics at Wayne State University, was an economic advisor to the Comptroller of the Currency from 1978 to 1979.

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The longer, if shallower, recession of 1990–1991 is quite different. There was no inflationary pressure in the economy comparable to that of 1980; there was no apparent basis for deliberately motivated monetary restriction that would have generated the real effects that were observed. But sharply reduced rates of growth in monetary aggregates from 1989 did occur, changes that are sufficient to explain the real consequences. Why did the monetary aggregates move as they did?

Several answers have been suggested. The hawks on the Federal Open Market Committee may have chosen to reduce rates of monetary growth to squeeze out remaining residues of inflationary expectations. The central bankers may simply have been unable to respond effectively to the real shocks to the economy represented by the defense drawdown and the general loss of confidence consequent to the S&L debacle; in short, they may have been *pushing on a string*. Alternatively, the Federal Reserve may have failed to understand the effects of the massive federal bailout of the S&Ls, along with the accompanying modified requirements for bank capitalization. In sum: was the Fed "effectively hawkish," "well intentioned but powerless," or "confused"?

As the discussion below will indicate, our preference is for the third explanation. But at this point, the relationship between the various explanations and the institutional success or failure of the monetary authority warrants some discussion. Those who seek to defend the Fed's record over the 1989-1992 period, during which time M2 increased at rates well below mid-level Fed targets, and actually declined in real terms, claim institutional success by pointing to the absence of inflationary pressures.[1] These monetary hawks overlook the real impact of monetary restriction on output and employment. They also ignore the more significant political feedback that was so clearly evidenced in the electoral results of November 1992. Can a monetary authority's action be considered successful when a single target is allowed to dominate all others, and independently of consequences?

The second and third explanations of the behavior of the Fed in 1990–1992 point toward institutional failure, but for quite different reasons, and with very different implications. According to the second hypothesis (pushing on a string), the economy suffered real shocks, and despite valiant efforts, these shocks were invulnerable to fully offsetting correction by monetary action. The Federal Reserve did fail to provide the monetary stability that was required to prevent and to shorten the shocks to real output and employment, but, so the argu-

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ment might go, to assess failure here is to model the working of an idealized control mechanism that is beyond the limits of institutional capacity. Real shocks must exert real effects, and a capitalist economy must, therefore, be expected to suffer cycles of boom and bust, despite the efficacy or inefficacy of monetary control institutions. In the extreme versions of this explanation, money and monetary policy do not, in some ultimate sense, matter. We are back to the early Keynesian mindset of the 1950s. The economy remains at the mercy of the forces of history. The monetary institutions are only of peripheral importance.

The problem with the pushing-on-a-string explanation is that there has been no demonstration, either in theory or in history, that a large capitalist economy must undergo large cyclical swings in the presence of monetary stability. If sectoral shocks may be offset by effective compensating monetary action, it follows that any cyclical movements in the aggregate economy can be traced to monetary disturbances, defined broadly so as to include failure of the monetary authorities to respond adequately and correctly to real shocks. Proper monetary action in the 1990–1992 period—prior to, during, and after the 1990–1991 recession—could have, and should have, offset fully any shocks that may have emerged from the defense sector or from changes in technology and consumer confidence.

Our position may be classified as "monetarist" in the "old Chicago" sense—that is, before "Chicago" came to mean "rational expectations."[2] In our view, the causes of real shifts in output and employment are to be sought in changes in the monetary aggregates, and these aggregates can be controlled by an effectively operating monetary authority. The Federal Reserve should not, according to this view, be allowed to escape blame for the onset and duration of the recession by hiding behind real cycle explanations. The authorities failed in their assigned task of providing the monetary conditions for the aggregate economy to work smoothly. (For this reason, Paul McCracken has suggested the creation of a commission of inquiry, similar in scope to the Aldrich Commission, the findings of which provided the basis for establishing Federal Reserve Structure in the first place.) The monetary "constitution," as embodied in the Federal Reserve structure, failed in 1990–1992, as it failed many times before.

Our task is to describe how and why the authorities went so badly wrong. This paper offers our detailed answer.

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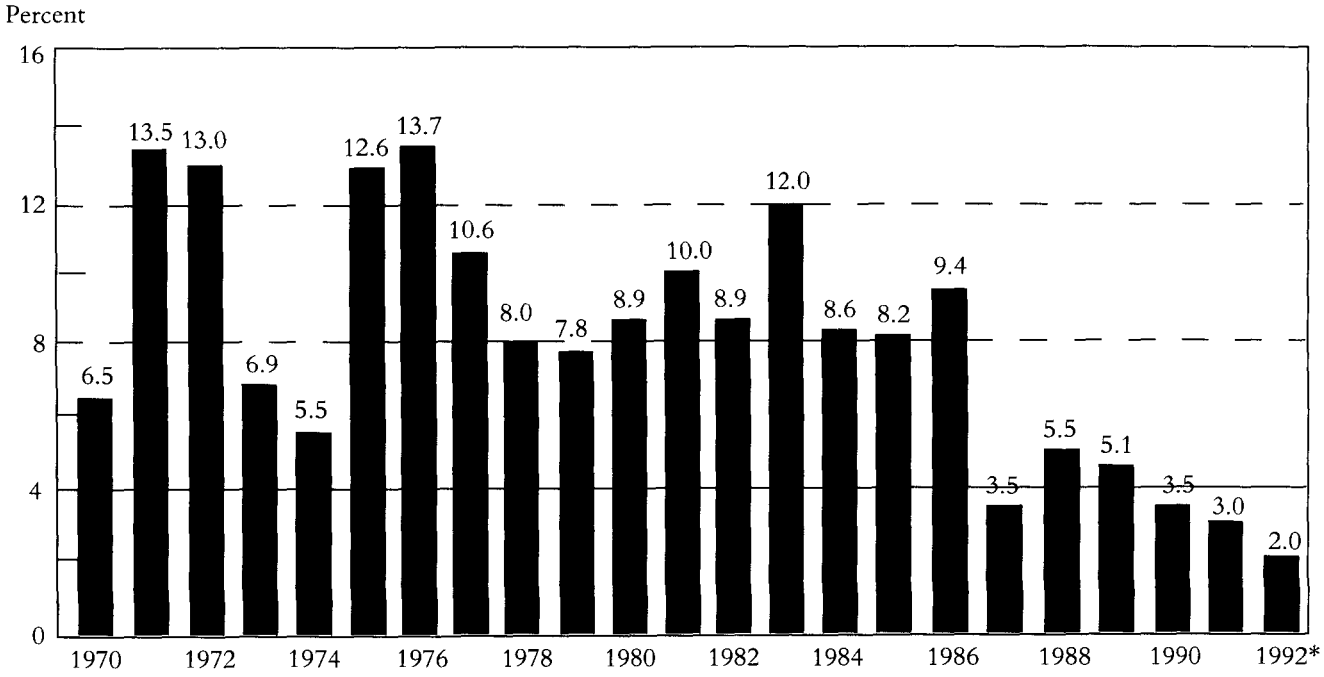
ANNUAL GROWTH IN M2
(Measured December to December)



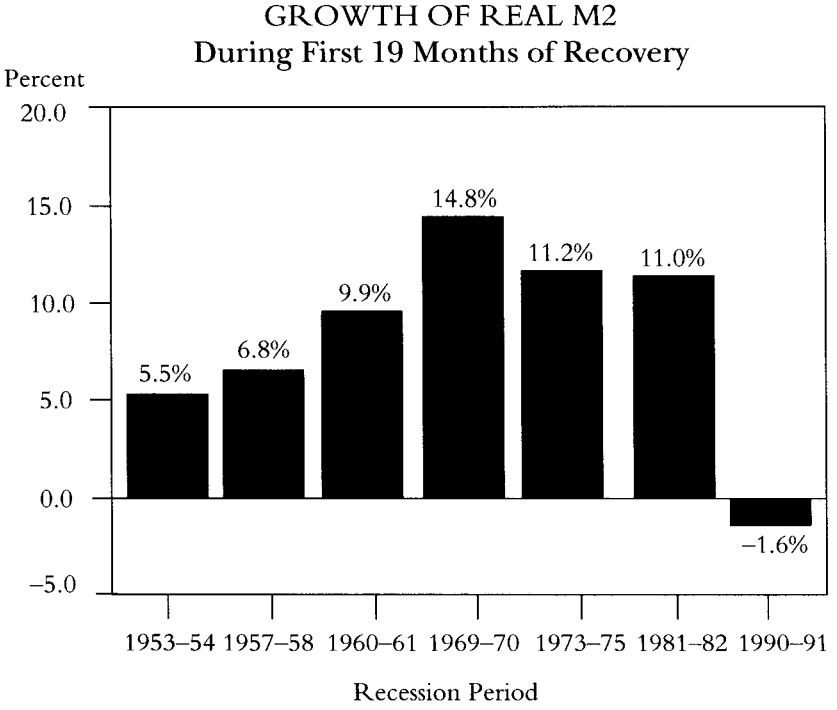
*Through October at an annual rate.

Source: Federal Reserve Board and U.S. Treasury

Figure 1

What Did the Fed Do?

The economic slowdown since 1989, the designated three-quarter recession from July 1990 until April 1991, and the anemic first six quarters after April 1991, reflect an extraordinary deceleration in money growth: from 9.3 percent in 1986 to 4 percent in 1990, 2.8 percent in 1991 and 1.9 percent in 1992 (see fig. 1). In the three-year slowdown of 1990–1992, the U.S. economy suffered from the lowest money growth in more than three decades. Alan Greenspan's monetary deceleration during and after the 1990–1991 recession was even more stringent and restrictive than the tight money policy that Paul Volcker introduced to reverse double-digit inflation in early 1980. The M2 growth rates of 2.8 percent and 1.9 percent in 1991 and 1992 fell below even the midpoints of the Fed's target ranges, which were explicitly selected to slow inflation. Had the Fed hit the midpoint of its own money targets in



Source: U.S. Department of Commerce

Figure 2

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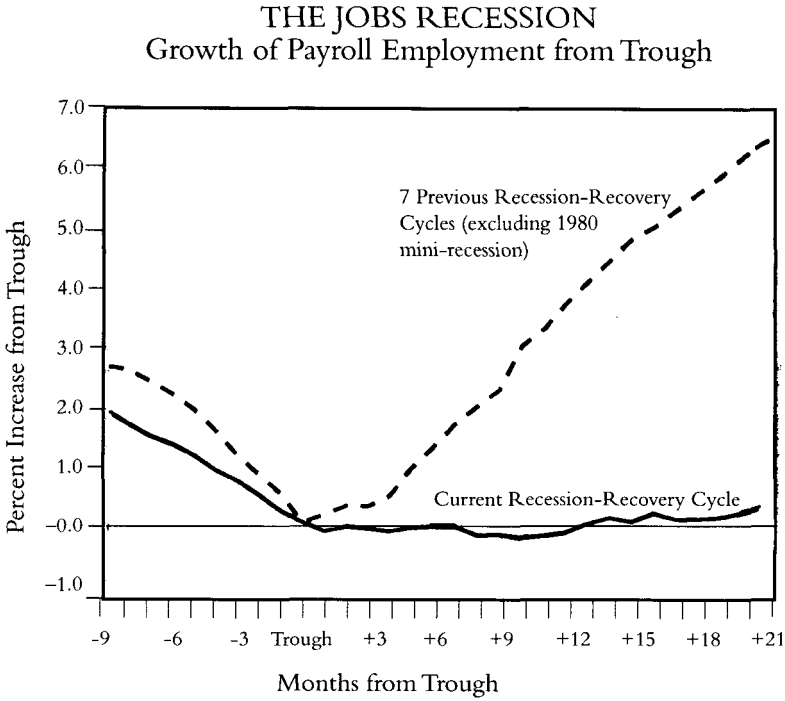

Figure 3

1991–1992, by early 1993 M2 would have been approximately $200 billion larger and the GDP perhaps about $350 billion higher.

Moreover, *real* M2 actually declined during the first 19 months of the recovery—in sharp contrast to prior recoveries, in which there were increases ranging from 6 percent to 15 percent over comparable periods (see fig. 2). In the 28 months following the July 1990 cyclical peak, real M2 declined by 2.6 percent—again in sharp contrast to other recoveries, where the increase in real M2 in the postcyclical period reached nearly 15 percent. Finally, a comparison of the Fed's own measure of the theoretical price level, P*, and the actual price level, P, shows almost the widest gap ever recorded, further suggesting that the economy underwent extraordinary deflationary pressures.

In the final analysis, and even allowing for the strong, but apparently temporary, upsurge in the fourth quarter of 1992, the first two years of the recovery were weak. It has been widely noted that the

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recovery has been subpar; and, in sharp contrast to the pattern evident in prior recoveries, we have barely achieved the employment level of the July 1991 peak. Early 1993 had brought what some of the Clinton team called a jobless recovery (see fig. 3).

Why Did the Fed Do It?

Our thesis is that the extraordinary monetary deceleration was neither the explicit goal nor the intended policy of the Federal Reserve. It came about because the Fed failed to appreciate the treacherous financial weather and remained relatively passive in the face of it.

Prior to the Great Depression, under the fractional reserve system, any bank was vulnerable to shifts from deposits to currency, particularly if exercised simultaneously by many customers. Deposit insurance was therefore hailed as the savior of fractional reserve banking.[3] However, another effect of deposit insurance was to vastly reduce pressure on depositors to distinguish between banks with safe and high-quality assets and banks with risky, low-quality assets. In effect, insurance monetized all deposits in order to minimize the occurrence of bank runs. The effects of insurance on the incentives and operations of banks and other financial institutions were largely overlooked.

Two of these effects warrant notice. First, because the incentive for depositors to switch between deposits and currency was substantially reduced, so, too, were the banks' incentives to maintain a healthy relationship between reserves and deposits. Prudent bank management no longer required careful attention to internally set reserve targets. A second and related effect is that bank management was no longer subjected to the external discipline imposed by the potential exit of clients. Banks and like institutions could, and did, pursue more active return-maximizing targets in choosing among possible loan portfolios.

As was the case with the preinsurance system, the postinsurance system worked well so long as the barometer stood at "fair." Once the financial weather shifted, the postinsurance system proved to be vulnerable, but for a different reason than before. Guaranteed against nominal value losses by the government, depositors did not, as before, generate financial crises in their efforts to shift from deposits to currency. But there was no guarantee that the value of the assets that served as the collateral on loans would not fall below the level of outstanding liabilities. As asset values fell, due primarily to the specu-

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lative overextension of loans, pressures were placed on banks and near-banks (i.e., S&Ls) to contract deposits so as to maintain balance-sheet accountability.[4] Many institutions that were unable to do so faced bankruptcy.

Depositors did not suffer from the great asset devaluation of the late 1980s; government deposit insurance was honored. Nonfailing institutions were subsidized by the government for assuming the deposit liabilities of those institutions that failed. These subsidy payments, however, were financed by a drawdown of deposits by the institutions and people who purchased the government debt instruments necessary to meet the subsidy charges.[5]

No restorative or corrective buildup of total deposits to the level that had been attained prior to the shift in asset values offset this huge decline in the growth of money. Even with a fully operative deposit insurance scheme in place, the effective growth in money would decelerate *pari passu* with the decline in asset values. Such a great financial shock should surely have been expected to generate real effects on prices, output, and employment.

The central purpose of the Federal Reserve is to offset such financial shocks by taking appropriate action to maintain reasonable gowth in the money supply. The Fed failed demonstrably in accomplishing this purpose. Not only did it falter in offsetting the shock of the S&L bailout, it also failed to offset the severely retarding effects of the new capital requirements on money growth following the Basel accord. Although the Fed reduced the funds rate many times over the course of the long recession, it was precisely this undue attention to interest rates, at the expense of neglecting the changes in the relevant monetary aggregates, notably M2, that perhaps reflects best the underlying confusion in analysis.

The Fed continues to implement monetary policy with an interest rate target even though this has a destabilizing effect on the economy. This policy tends to accelerate money growth when the economy is growing stronger, since the greater demand for loans generated by a strengthening economy may raise interest rates, leading the Fed, in turn, to increase bank reserves in order to drive the funds rate back down. Conversely, operating with a funds rate target can slow monetary growth when the economy weakens: a lower demand for loans may lower interest rates, leading the Fed to withdraw reserves from the system or fail to expand them sufficiently in order to keep the funds rate at the targeted level. At the end of the 1980s, increased capital requirements and the generalized drawdown of deposits result-

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ing from the payment of subsidies to "good" banks in exchange for their assumption of S&L liabilities increased excess reserves and, therefore, tended to lower the funds rate. Rather than loosening credit in order to counteract this monetary drawdown, the Fed made matters worse in 1989–1992; its preoccupation with the funds rate may well have prevented it from seeing that credit was, in fact, contracting and the economy was, in fact, faltering.

Hence, it may be that the anemic money growth during the 1990–1992 slowdown was not the objective of Fed policy, but resulted from an abdication of policy. It strains credulity to believe that such an extreme money deceleration in a recession would be the Fed's desired policy; it came about, we suggest, from passivity because the Fed failed to understand how the bailout of the failed S&Ls and the imposition of the new capital requirements, in conjunction with interest-rate targeting, severely retarded money growth.

The Fed's Defense

How might defenders of the Fed respond to the charge of monetary malpractice? One argument offered by Greenspan himself is that the public did not want to hold more M2: thus, there was need to "work down the debt excess," "restructure the balance sheets," "work off the debt overhang," and "work off the excesses of the 1980s." Greenspan's musings about such excesses were music to the ears of the *New York Times* and the *Washington Post*. But they express an elementary fallacy. Any nominal money target can be achieved by the Fed through central bank operations, especially a target as wide as the low end of the range from 2.5 to 6.5 percent that was set in 1992.[6]

A second argument used by the Fed is to try to blame the poor M2 performance on the banks: Either the banks did not want to supply more M2 or the cost of intermediation has gone up.[7] These claims repeat the same fallacy.

If one accepts Greenspan's argument that the niggardly growth in M2 between 1989 and 1993 was due to the public not wanting to hold more money, then was the 35 percent reduction in money between 1929 and 1933 due to the public not wanting to hold more money? Will defenders of the Fed also suggest that the great inflation of the 1970s was due to the public wanting to hold more money? Greenspan's theory seems to be that recessions are caused when people refuse to hold more money and inflations are generated when people want to

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hold more money. This merely underscores the error of suggesting that the stock of nominal money is determined by the public, as opposed to the Fed. If Greenspan is right, then why do we need the Federal Reserve?

We may sum up this section by asking defenders of Federal Reserve monetary policy in 1990–1992 three questions: (1) Could the Fed have produced more M2 in the three years 1990–1992? (2) Would more M2 have increased output, employment, and income? (3) Would such increases have been desirable?

How the Fed Escapes Responsibility

One remarkable aspect of the recent recession and slow recovery has been the extraordinary agreement among prominent economists that Fed policy was too restrictive. Unanimity on monetary policy among such diverse figures as Buchanan, Friedman, Samuelson, Solow, and Tobin has rarely been observed.[8] And yet, surprisingly, hardly any of this criticism was noticed in the public arena. Paul McCracken, a former Chairman of the Council of Economic Advisors, a responsible and careful observer, stated in print that Greenspan's record constituted the worst monetary policy since 1931.[9] Samuelson and Friedman both declared that Greenspan's policy was responsible for the election of Bill Clinton.[10] The Shadow Open Market Committee, the self-appointed watchdog of the Federal Reserve, apparently forgot what it stood for, issuing warnings about inflation in 1991 and 1992, and then praising the Fed for doing the very things that the Shadow Committee had been criticizing for 20 years.[11]

Not a single word of criticism of Fed policy in 1990–1992 came from the American Enterprise Institute, the Cato Institute, or the Heritage Foundation, which might be expected to advocate a monetary policy conducive to economic stability. Nor was unusually blunt testimony on Fed performance from Paul Samuelson and Paul McCracken at the December 30, 1992 hearings of the Joint Economic Committee[12] reported by the *New York Times*, the *Wall Street Journal*, or the *Washington Post*.

If professional condemnation has not been translated into popular blame, though, it is nothing new. At no time since the Fed's establishment has it been widely blamed for its failures. The Fed's responsibility for the Great Depression,[13] its role in the great inflation of the 1970s,[14] and its contribution to the 1987 stock market crash[15] are no

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more widely known than its responsibility for the extreme monetary deceleration before, during, and after the 1990–1991 recession.

The Fed's public relations success is so great that it is beginning to affect the ranks of academic economists as well. The January 1993 American Economic Association session on the 1991 recession featured three prominent macroeconomists; all argued that the recession was due to some shocks: one thought it was a consumer shock, one thought it was a technological shock, and one thought it was a combination of several shocks that he could not identify. But none of them allowed that the recession and anemic recovery had anything to do with monetary policy.

Economic and Political Prospects

As of mid-May 1993, the Fed continues to pursue the interest-rate targeting that led to an inappropriate monetary policy prior to, during, and after the 1990–1991 recession, and it has been unwilling to identify this technique as responsibile for its inappropriately restrictive policy. In February 1993, the Fed testified that it expected some deceleration from the 1992 inflation rate of 3.1 percent, projecting inflation of 2.5 to 2.75 percent and real output growth from 3 to 3.25 percent.[16] This adds up to an expected nominal GDP growth of approximately 6 percent. The Fed's money target range of 2 percent to 6 percent can easily finance this GDP; the actual money growth rate must, of course, reflect velocity developments. The problem is not that Fed targets or the projections on which they are based are awry; the problem is that in the words of the biblical Isaac, "the voice is the voice of Jacob but the hand is the hand of Esau." The Fed money targets presented to Congress—its voice—are appropriate, but the Fed's actual policy in the past few years and what it may continue to do in 1993—its hand—smack of malpractice.

There are at least two possible forms of malpractice that may materialize in the immediate future. In the first scenario, the Fed continues with the very tight policy of 1991 and 1992, leaving the economy weak and leading public opinion to demand the fiscal stimulus and government initiatives that the Clinton administration has already demonstrated it favors. The upshot could well be massive public works, more regulation, economic planning, and public spending on a host of new projects: a new New Deal.

Another alternative, and perhaps a more likely one, is that the Fed

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may respond to administration pressure with an aggressive policy of monetary ease. In such case, we might soon see inflation fears surge, leading to higher interest rates and, in turn, stagnation setting in once again. This would replay what happened in the late 1970s, when Arthur Burns was Chairman of the Federal Reserve Board. Before the 1972 election, his expansionary policy had caused inflation to accelerate. In 1975 he reversed course, pursuing an extremely tight policy. The increase in real M2 in the first 28 months following the November 1973 peak was 1.5 percent, compared to over 14 percent in other recovery periods. This destroyed Gerald Ford's election bid. But, after Jimmy Carter's election in 1976, Burns opened the money spigot wide and produced a round of double-digit inflation.

Alan Greenspan, who was chairman of the Council of Economic Advisors under Ford, may duplicate in the early 1990s what Arthur Burns did in the late 1970s in an effort to make himself politically eligible for reappointment. If so, Bill Clinton's presidency, like Jimmy Carter's, may culminate in stagflation. If not, it may, like FDR's, culminate in a needless acceleration in the growth of the state.

—*May, 1993*

NOTES

1. Allan H. Meltzer, "The Attack on Central Banks," *Wall Street Journal*, December 18, 1992. See also the Semiannual Statements of the Shadow Open Market Committee, Bradley Policy Research Center, University of Rochester, especially the reports for 1991, 1992, and 1993.
2. See Milton Friedman, *A Program for Monetary Stability* (New York: Fordham University Press, 1960).
3. Deposit insurance was almost universally acclaimed as a crucial banking reform. Friedman and Schwartz's descriptions of federal deposit insurance as "the structural change most conducive to monetary stability" (434) and as "a form of insurance that tends to reduce the contingency insured against" (440) illustrate the general support for this reform. See Milton Friedman and Anna J. Schwartz, *A Monetary History of the United States, 1876–1960*. (Princeton: Princeton University Press, 1963).
4. E. J. Kane, *The S & L Insurance Mess: How Did It Happen?* (Washington, D.C.: Urban Institute Press, 1989); L. J. White, *The S & L Debacle* (New York: Oxford University Press, 1991); J. Barth, *The S & L Debacle*. (Washington, D.C.: A.E.I. Press, 1992); D. I. Fand, "On The S & L Debacle," *Journal of Public Finance and Public Choice* 10, no. 1 (March 1992).
5. Paul Kasriel and Robert Laurent, "Closing Depository Institutions and Fed Funds Targeting—the Case of an Inadvertently Contractionary Mon-

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etary Policy," unpublished MS., October 29, 1991; Paul Kasriel, "How the Fed Subverts Its Rate Cuts," *Wall Street Journal*, December 23, 1991. See also Kasriel and Laurent, "Closing Depository Institutions and Fed Funds Targeting—the Case of an Inadvertently Contractionary Monetary Policy," presented at the July 1992 meetings of the Western Economics Association—a revised version of their October 1991 MS.

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Roger W. Garrison

KEYNESIAN SPLENETICS: FROM SOCIAL PHILOSOPHY TO MACROECONOMICS

Underlying the analytical framework of Keynes's General Theory *is a comparison of capitalism and socialism in terms of risks and consequent rates of interest, rates of investment and capital accumulation, and levels of employment and output. Keynes's social philosophy and corresponding vision of macroeconomic reality biases his comparison in favor of socialism, or, more precisely, in favor of "a comprehensive socialisation of investment." Recognizing the significant influence of Keynes's early social philosophy on his subsequent macroeconomics—which is firmly established by Allan Meltzer's "different" interpretation of Keynes—refocuses criticism of Keynes's analytics, provides a basis for assessing other interpretations of the* General Theory, *and helps account for the absence of reconciliation among the modern recastings of Keynesian macroeconomics.*

In the fall of 1986, 16 economists gathered in San Francisco to discuss a book-length manuscript prepared by Allan H. Meltzer. Its five substantive chapters, nearly complete at the time if not completely understood by its earliest readers, represented more than two decades of grappling with Keynes's vision of the world and with the analytical framework on which Keynes hung his ideas. In comparison to most of the conference participants, which included Milton Friedman, David

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Roger W. Garrison, Department of Economics, Auburn University, Auburn, AL 36849, telephone (205) 844-2920, telefax (205) 844-4016, wishes to thank Dan Gropper, Sven Thommesen, Mark Thornton and Leland Yeager for their helpful comments, and especially Allan Meltzer and an anonymous referee for their thoughtful guidance.

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Laidler, Axel Leijonhufvud, Donald Moggridge, and Leland Yeager, I was a newcomer to the business of interpreting Keynes. But I had been following the development of Meltzer's argument since the publication of "Keynes's *General Theory*: A Different Perspective" in 1981.[1] And this early paper had become the core chapter in Meltzer's extended treatment of Keynes's vision and analytics.

If my reading of Meltzer is correct, then *Keynes's Monetary Theory: A Different Interpretation* (Cambridge: Cambridge University Press, 1988) is doubly mistitled. Too narrowly focused and substantially understated, Meltzer's title is at odds with his overarching theme: Unlike all the other books and articles offering "different" interpretations of Keynes, this one shows that Keynes's macroeconomics, very broadly conceived, is simply an extension of his social philosophy. Possibly because of its title, reviewers of Meltzer's book have limited their own focus to Keynes's theory of money or to the age-old policy debate on rules versus discretion.[2] This review article provides an opportunity to assess, in the broadest possible context, the difference that Meltzer has made. Framed by Keynes's social philosophy, Meltzer's book presents a view of Keynes that is both refreshing (in approach) and disquieting (in substance). And the apparent ease with which Meltzer arrives at his interpretation causes the reader to wonder how so many other interpreters could have missed so much for so long.

Meltzer's scholarship invites a stocktaking. A half century and counting after the publication of the *General Theory*,[3] interpreting Keynes remains a growth industry—and with no clear industry leader. What accounts for the enduring scope for interpretation—and misinterpretation—of Keynes? What obstacles are there to getting Keynes straight? And what are the standards by which a given interpretation can be judged or alternative interpretations compared? A brief digression on the different interpretations will increase our appreciation for Meltzer's insights. The most satisfying answers to these and related questions are ones that stem from Keynes's social philosophy.

Keynes in the Hands of His Interpreters

The *General Theory* is filled with engaging but cryptic prose. While its lack of clarity was seen by some early critics as a clear symptom of error and confusion, it was seen by others as a hallmark of genius.[4] It was that special combination of "engaging but cryptic"—coupled with

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Keynes's long established status as a man of letters and of political affairs—that gave birth to the enterprise of interpreting Keynes. What did he actually say? What could he possibly mean? Interpreters soon discovered that plausible answers to one of these questions were difficult to square with answers to the other. The gap between actual statements made and (alleged, supposed, or divined) meaning intended was substantial—and remained so until Meltzer's melding of Keynes's macroeconomics and social philosophy.

Most of Keynes's interpreters start on the "meaning" side of the interpretation gap and try to bridge toward actual statements in the *General Theory*. Anatol Murad's 1962 book is immodestly entitled *What Keynes Means*.[5] Other interpreters dwell on what Keynes must have had in the back of his mind or hint about how he would have changed his mind had he lived a few more years—long enough to see the inflationary bias in his policy prescriptions.[6] The range of possible meanings that characterizes this approach has been effectively constrained by the implicit assumption that Keynes's intended message is internally consistent, insightful, and relevant. Whether or not such an assumption is warranted, most modern recastings of the *General Theory* take the form of a conjectured vision of the macroeconomy, largely if not wholly of the recaster's own making, followed by a search through Keynes's writings for passages that provide hints about the vision. Judged by this standard of exegetical research, Meltzer's is truly a different interpretation.

Differences among interpretations are attributable in large part to different judgments of the interpreters about which chapter(s) of the *General Theory* or which assumption(s) are key to getting Keynes's central message (282 and *passim*). For instance, so-called Keynesian Hydraulics draws inspiration from Chapter 3, "The Principle of Effective Demand" and Chapter 10, "The Marginal Propensity to Consume and the Multiplier." These chapters, which emphasize the determinacy—given the level of investment—of the other macroeconomic magnitudes, underlie the conventional textbook Keynesianism of the 1960s. Keynesian Kaleidics, which features the radical subjectivism of G. L. S. Shackle and Ludwig M. Lachmann, draws heavily on Chapter 12, "The State of Long-Term Expectations." This chapter, along with the 1937 summing-up article[7] in which Keynes emphasizes the uncertainties inherent in a market economy, establish the fundamental indeterminacy of investment and hence of the other macroeconomic magnitudes. The same uncertainty that discourages investment encourages the hoarding of money, which accounts for the emphasis

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by Paul Davidson and other Post Keynesians on Chapter 17, "Essential Properties of Interest and Money" (285). Meltzer deals with Shackle and Davidson under the headings "Irrational Expectations" (280–85) and "Gross Substitution and Finance" (285–91).

The New Keynesians of recent years find their *General Theory* roots not in some specific chapter but in the assumption of fixed or sticky prices and wage rates, an assumption widely believed (though not by Meltzer) to underlie the first 18 chapters of the book. New Keynesians reject New Classical theories that assume perfect price and wage flexibility, thereby reversing the free-market conclusions and policy implications that would otherwise flow from New Classical models. A major concern of the New Keynesians is the status of the claim that prices and wage rates are fixed or sticky downward. Prior to their own theorizing, the notion of fixity or stickiness, on which so much of Keynesianism is thought to rest, had been brought into macroeconomics by Keynes's interpreters (if not by Keynes himself) as an ad hoc assumption. What is new about New Keynesianism is its supply of "sophisticated reasons" for stickiness, which save the theory from ad hocery. Theories about pricing behavior have important implications about the pattern of price and wage adjustments that might follow, say, an economywide increase in the demand for output. And the adjustment pattern determines, in turn, how the impact of the increased demand is divided between increases in prices and wages and increases in output and employment.[8]

Recognizing that unemployment follows trivially from the assumption that the wage rate is stuck above its market-clearing level, Don Patinkin imputes great significance to Chapter 19, "Changes in Money-Wages," where Keynes explicitly relaxed the assumption of price and wage-rate stickiness but went on to argue that the general thrust of his theory was unaffected: So long as downward adjustments in the wage rate are accompanied by downward adjustments in prices, unemployment would persist. Although inspired in part by the perceived Swedish flavor of that same Chapter 19, Axel Leijonhufvud goes back and forth between Keynes's earlier book, *A Treatise on Money*, and the *General Theory*, producing a smorgasbord of meanings. Z-theory, so named by Leijonhufvud, gives play to quantity adjustments in the spirit of the *General Threory* but rejects the liquidity-preference theory of interest, which Keynes saw as a critical innovation, setting his second look at macroeconomic relationships apart from his first.[9] Leijonhufvud's interpretation gets the highest marks for internal consistency, insightfulness, and relevance, but he has diffi-

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culty in convincingly bridging from this interpretation to actual passages in either of the two books. Meltzer deals with Patinkin and Leijonhufvud under the headings of "Elasticity pessimism" (270–80) and "Coordination failures" (266–70).

Chapters 3, 10, 12, 17, and 19 of the *General Theory* all have some claim on our attention. These and most of the other chapters sandwiched between Keynes's throat-clearing remarks in Chapter 1, and his excursions into social philosophy in Chapter 24, contain important clues about macroeconomic relationships as envisioned by Keynes. Significantly, the one chapter most heavily discounted if not entirely overlooked by modern macroeconomists is the final one, Chapter 24, "Concluding Notes on the Social Philosophy toward which the General Theory might lead." This common oversight is attributable, one suspects, partly to its status as "Notes," partly to the shift in focus from macroeconomics to social philosophy, and partly to the change in tone. If Chapters 2 through 23 read like papers presented in a series of seminars, Chapter 24 reads more like a transcription of lively conversation at the cocktail party marking the end of the series.

Standing at the open bar, Keynes lets down his guard and tells the reader what he has in mind for our future. He looks forward to a more equitable and less arbitrary world, achievable, in his judgment, within one or two generations. This imagined world is one in which capital yields no return apart from compensation for supervising it and bearing the associated risks. Interest, which "rewards no genuine sacrifice," would be nil. Its elimination would mean "the euthanasia of the rentier, and, consequently, the euthanasia of the cumulative oppressive power of the capitalist to exploit the scarcity-value of capital." Once the "high stakes" of the capitalist system are eliminated, "the State will have to exercise a guiding influence." In Keynes's reflective judgment, "a somewhat comprehensive socialisation of investment will prove the only means of securing an approximation to full employment."[10]

The unbuttoned Keynes of Chapter 24 makes no appearance at all in modern textbooks and is largely ignored by Keynes's interpreters. Alvin Hansen, in his influential *Guide to Keynes*, suggests that Keynes was just "flying his kite" in the final chapter (quoted, 182). Dismissing Chapter 24 in such a cavalier fashion might be justified if it weren't for the fact that the views expressed there, as Meltzer shows, serve to reaffirm fundamental beliefs long held by Keynes. His views on social philosophy remained largely unchanged from the early years, when he wrote "Am I a Liberal?" (1925), "The End of Laissez-Faire" (1926), and "The Economic Possibilities for Our Grandchildren" (1930). The kite

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that Keynes flew at the end of the *General Theory*, together with his subsequent article on "My Early Beliefs" (1938), signals a reaffirmation of those beliefs.[11] His macroeconomics of the mid-1930s is not to be interpreted as something at odds with his long-embraced social philosophy. Here Meltzer is simply heeding Joseph Schumpeter's insight that vision precedes theory.

Meltzer's rendition of Keynes is not drawn from Chapter 24 in the same way that Keynesian Hydraulics is drawn from Chapters 3 and 10 and Keynesian Kaleidics from Chapter 12. Rather, in reading the first 23 chapters, Meltzer couples Keynes's final chapter with his "early beliefs" to fashion a kind of social-philosophy sieve. This sieve allows much to fall through—the imposing and relaxing of heuristic assumptions about price and wage-rate fixity, the interplay of demand elasticities that characterize the real and monetary sectors of the economy, and the hints about short-run countercyclical policy—while trapping only the nuggets of wisdom about the root nature of capitalism and the implied directions for reform.

This technique pays off for Meltzer in a way that belies his book's modest title. His interpretation is in one sense less and in another sense more than the others. It is less than the others because once the sieve has sorted things out, Meltzer simply takes Keynes at his word. He begins on the What-did-Keynes-actually-say? side of the interpretation gap. And the sieve itself, he discovers, has reduced if not eliminated the gap. Getting to the What-could-he-possibly-mean? side requires little or no input from the interpreter. Meltzer, operating under the assumption that Keynes meant what he said, refrains from imposing the constraint that what he meant must be internally consistent, insightful, and relevant. However, Meltzer's Keynes amounts to more of an interpretation than the others (as argued in a subsequent section) because it actually encompasses important aspects of most of the chapter-specific renditions of Keynes.

Meltzer shares with the Keynesian fundamentalists a certain insistence that we take Keynes literally but differs from them by his having a workable technique for determining what is fundamental. That is, while the fundamentalist pores over the *General Theory*, Meltzer pours the *General Theory* through the social-philosophy sieve. For the student of Keynesian economics who is not well grounded in Keynes's social philosophy, a nearly equivalent operating procedure would be: The more Keynes sounds like he is venting his spleen, the more fundamental are his thoughts and the more literal his pronouncements are to be taken. Hence the title of the present essay, which attempts to cap-

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ture the substance and spirit of the central message that Meltzer draws from Keynes's book.

Keynes as Comparative Systems Analyst

As chapter follows chapter, Keynes's focus shifts—usually without warning—from one level of abstraction to another, from pure theory to empirical observation, and from concern about workaday policy to prospects for fundamental reform. But underlying it all is a lopsided exercise in comparative economic systems. Keynes is continually comparing capitalism-as-it-is against the standard of socialism-as-it-has-never-been. Judging the current system to be both unstable and unjust, he holds out hopes—and is even optimistic about the prospects—for making the transition to something better.

Meltzer's Keynes argues from his belief that in a society with ideal economic institutions the rate of interest would be zero to the conclusion that in our society, with its less-than-ideal economic institutions, the rate of employment is too low (123–35). A chain of arguments involving risk, interest, investment, capital, output, and labor is tailored to fit each of the two sets of economic institutions and to demonstrate the superiority of the imagined society over the actual one.

In the imagined system of socialism-as-it-has-never-been, risks would be minimized, the rate of interest would be nil, and all investment opportunities would be fully exploited. Capital (whose rental price, in equilibrium, *is* the rate of interest) would cease to be scarce, output would be at its maximum, and the labor force would be fully employed. In our current system of capitalism-as-it-is, risks are unnecessarily high, the rate of interest is correspondingly high (read: not zero), and investment is limited to those undertakings whose expected yield exceeds the interest rate. Capital, then, is kept artificially scarce, output is less than its maximum, and the level of employment is below its potential. Meltzer demonstrates, in effect, that Keynes's ultimate verdict on capitalism, as well as his proposals for reform, are based squarely on this comparative-systems exercise. (In correspondence, Meltzer has indicated that, for him, the camparison is between actual and ideal conditions rather than between capitalist and socialist systems. I do not believe, however, that my preference for the terms capitalist and socialist does injustice either to Meltzer or to Keynes.)

The theory offered up by Keynes traces the perceived chain of cau-

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sation from greater-than-zero interest to less-than-full employment. If this is the essence of the *General Theory* (and I believe it is), then the decades of difficulties in so identifying it become understandable. First, exercises in comparative economic systems can have relevance only if the systems being compared are in fact comparable. Actual or possible systems can be compared with one another; ideal or imagined systems can be compared with one another. But a hybrid comparison—between one actual and one ideal system—is so biased from the outset in favor of the ideal as to hardly be recognizable by modern scholars. Second, the one-way causal connections (from interest to employment), so important to Keynes's comparative-systems story, often get lost in its telling. His use of the conventional analytics of supply and demand—in which the interaction of the market for labor and the market for loanable funds implies two-way causality—belies his central theme. This particular obstacle to getting Keynes straight was compounded by Keynes himself when he endorsed John R. Hicks's early interpretation of the *General Theory*, for Hicks's set of simultaneous equations explicitly show the interaction of the market forces that determine both labor income and the interest rate.[12] And third, the arguments are presented backwards. The logical and causal chain runs from the rate of interest to the rate of employment, yet Keynes deals with the market for labor first (in Chapter 2) and only much later (starting with Chapter 13) with the rate of interest. Here Meltzer's interpretation is actually bolstered by one aspect of the *General Theory*'s obscurity. In his early chapter on the problem of less-than-full employment, Keynes attempts to downplay the significance of market forces operating within the labor market itself. In so doing he finds it necessary to anticipate a later argument (involving the interest rate) by referring cryptically to "certain other forces," or "a different set of forces."[13]

To enumerate these difficulties is not to cast doubts on Meltzer's interpretation. After all, Meltzer's Keynes firmly believed that the ideal system he had in mind was in fact a possible system. His failure to explain in any detail just how this ideal system would work is consistent with socialist thought in general, which has always focused on the perceived failings of the actual system rather than on the allegedly superior workings of the imagined one. Keynesian economics as an exercise in comparative systems, then, is not to be dismissed out of hand. In carrying out the exercise, Keynes often resorted to the framework of mutual determination because that was British economics of

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the period. And he addressed the issue of employment first because that was his and his readers' most pressing concern.

Now that Meltzer has overcome the difficulties of interpretation and identified Keynes's underlying chain of argument, we are in a position to ask some critical questions. How well does this chain hold up? How strong is each of its links? And how essential is each link to the Keynesian vision and to the various interpretations of Keynes? Meltzer provides good clues and a summary judgment but stops short of a full critical analysis.

Keynes as Socialist

Unique to Meltzer's interpretation is the particular significance he attaches to Keynes's treatment of risk (128–30 and *passim*). The focus here is on the riskiness of lending over and above the riskiness, if any, of the projects undertaken by borrowers. In a market economy, saving must wend its way to investment through financial markets. And while the saver-lender and the borrower-entrepreneur share their investment's yield, there is a compounding of risk. Equivalently, the so-called lender's risk rides piggy-back on the project risk born by the borrower. The borrower forms a risky expectation about the net yield of his or her investment project; the lender forms a risky expectation about the borrower's ability to form relevant expectations. Inherent in private financial and capital markets, then, is a component of risk that would be completely absent if the borrower and the lender were the same agent—completely absent, that is, if there were a comprehensive socialization of investment. Keynes seemed to believe that this component of risk was large and unstable. In the Keynesian vision, this socially unnecessary lender's risk accounts for most if not all of the market rate of interest. And worse, it is subject to unanticipated change as lenders, overcome by the "fetish of liquidity," hoard rather than lend their money in order to avoid the risk. Accordingly, the elimination of lender's risk through the social direction of investment would effectively minimize if not eliminate altogether the necessity of paying—and the privilege of receiving—interest income.

The first two links in Keynes's chain of argument, establishing the comparative risks and the corresponding interest rates that characterize capitalism and socialism, are the most crucial and the least plausible. Keynes seems to believe that risks can be eliminated through social reform with no effect on the quality of investment decisions. He

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sometimes argues as if his ideal government can somehow control the total volume of investment, minimizing risk, while private enterprise continues to control the direction of investment, maximizing allocational efficiency. On the page immediately following his call for a comprehensive socialization of investment, Keynes sees "no reason to suppose that the existing system seriously misemploys the factors of production which are in use. . . . It is in determining the volume, not the direction, of actual employment that the existing system has broken down."[14] Just what specific social reforms would eliminate risk so as to correct for volume but would leave direction unaffected are never spelled out in enough detail to permit a critical evaluation.

Further, to argue that the elimination of lender's risk—or of all risks, for that matter—translates into the elimination of the interest rate is to totally misunderstand the nature and significance of interest. Whatever complications there may be in the form of a risk premium, an inflation premium, and a liquidity premium, the rate of interest reflects some underlying intertemporal terms of trade. Goods or purchasing power available only at some future date trade at a discount relative to goods or purchasing power available now. The general notion that sooner is preferred to later is as fundamental to economic reasoning as the notion that more is preferred to less. The systematic discounting of the future and the corresponding positive rate of interest was understood by some classical economists, as particularly evidenced in Nassau Senior's abstinence theory of interest; by the Swedish economists, as exposited at length in Gustav Cassel's *Nature and Necessity of Interest*; and by the Austrian economists, some of whom attributed interest solely to the time preferences of market participants. Even in Marshall's *Principles*, the notion of "waiting" figures importantly in the discussion of interest. Independent of monetary considerations, the value of time implies a positive rate of interest. Keynes gained little ground in his attempt to denigrate this broadly shared understanding of the economics of interest. His question-begging perplexity about Marshall's views was based on the failure of Marshall (as perceived by Keynes) to recognize that interest is largely a monetary phenomenon particularly characteristic of a decentralized financial sector.[15]

Once Keynes has established—at least to his own satisfaction—that in an economy with a private investment sector, there are substantial risks which are subject to change and that the sole effect of socializing that investment sector is to eliminate those risks and with them the interest rate, his propositions about the level of investment, the size of the capital stock, and the rates of output and employment follow

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almost trivially. Investment, capital, output, and employment are necessarily greater in Keynes's imagined world than the corresponding magnitudes in the world-as-we-know-it, where lenders take risks and borrowers pay interest. Indeed, in Keynes's utopia investment is exhaustive, capital is not scarce, output is maximal, and employment is full.

Less important to Keynes was the fact that the macroeconomic magnitudes in the world-as-we-know-it are collectively subject to variation. The performance of capitalism is not always as bad as it is sometimes. The prospects for ironing out the ups and downs have long been the primary focus of Keynesian Hydraulics. The key issues here are the relative strengths of the government-spending multiplier as compared to the tax-cut multiplier, and the relative merits of fiscal policy in general as compared to monetary policy as a means of nudging capitalism-as-it-is in the direction of full employment. Though not Keynes's fundamental concern, he recognized that intervention, in the form of monetary and fiscal policy, by making for marginal improvements in economic performance, may hasten the day that society can afford the more fundamental transition to something better. Some makeshift patching up of the current system may even be necessary to prevent serious backsliding and to keep hope alive.

Keynes's exercise in comparative economic systems can serve as the basis for the claim that he offered a theory of employment (as suggested by the title of his book) rather than a theory of unemployment. That is, he theorized that the equilibrium level of employment in the world-as-we-know-it is less on average and involves a greater variability than in his imagined world. So-called involuntary unemployment—a term that has engendered much controversy—is simply the difference between the two equilibrium levels of employment. It is a comparative-systems employment differential made up of two components. The secular component derives from the "less on average" aspect of the comparison; the cyclical component derives from the "greater variability" aspect of the comparison. Meltzer (126) argues that the secular component is Keynes's major concern. The *General Theory* is not predominantly about business cycles.

Although Meltzer seems unperplexed to find little in Keynes's book on business cycles and countercyclical policy, he is perplexed to find so little about foreign trade and trade policy. The neglect of the foreign sector in the *General Theory*, Meltzer claims, is "inexplicable" (311). But his general approach to explaining Keynes seems uniquely capable of putting the issues of foreign trade and trade policy in their proper

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perspective. Taking a comparative-systems point of view, we can say that throughout his academic career Keynes was in matters of trade consistent: that is, he was consistently against intervention, or consistently in favor of it, depending upon what alternative mechanisms there were for macroeconomic manipulation. He applauded the Mercantilists for manipulating trade flows, recognizing that there was nothing else for them to manipulate. For later periods when fiscal and monetary institutions had become sufficiently developed, he recommended these as the more appropriate tools of intervention. Policies affecting trade flows pit country against country, but fiscal and monetary policies can lift all countries together toward higher levels of prosperity. However, if most countries are lacking in enlightened leadership, the fiscal and monetary policies of enlightened countries—and certainly their reforms aimed at eliminating the interest rate—will have to be accompanied by protectionist policies to prevent trade flows from thwarting the uplifting effects of such policies and reforms.[16]

The lessons of the *General Theory*, whether in terms of policy in the narrow sense or of fundamental reform, apply either (1) to all countries collectively and without protectionist measures or (2) to each country separately but with protectionist measures. This implicit all-and-without or each-but-with rule for application allowed Keynes to unbundle the issues and compare existing with imagined societies without addressing at each turn the issues of foreign trade.

Keynes and the Keynesians

Keynesian Splenetics stands or falls with the validity of Keynes's comparative-systems analysis and hence the relevance of the employment differential. By discounting Chapter 24 and related material scattered over earlier chapters, virtually all prior interpretations of Keynes have implicitly rendered the judgment of "invalid and irrelevant." Keynes's lamentable use of the term "involuntary unemployment," however, has allowed interpreters to conceive of the comparative-systems employment differential as *un*employment in the more conventional sense. Unemployment means that workers are off their supply curve—either temporarily or permanently. The quantity of labor demanded falls short of the quantity supplied. Accordingly, full employment means the level of employment that puts workers on their supply curve. Full-employment output and full-employment income are defined, in this recasting of Keynes, as the levels of output

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and income consistent with a fully employed labor force working with a given stock of capital.

Keynes's comparison of capitalism and socialism is thus replaced with an analysis of capitalism that allows for the possibility of an unemployment equilibrium. The problem of unemployment, whether conceived in equilibrium or disequilibrium terms, must stem from sluggishness or from perversities of one sort or another in the market process where labor supply is played off against labor demand. The notions of non-scarce capital, exhaustive investment, and zero interest play no part at all in either the dynamics of disequilibrium or the possibility of unemployment equilibrium.

Here, the gulf between Keynes and the Keynesians, the interpretation gap, is virtually unbridgeable. Keynes compared capitalism and socialism in terms of a perceived unidirectional causation—from risk to interest to investment to capital to output and employment. His unemployment-equilibrium interpreters depict the capitalist system with simultaneous equations, which imply multidirectional causality. Typically, this fundamental difference between Keynes and his interpreters is not explicitly acknowledged, but hints of it are unavoidable as the interpreters try to make sense out of Keynes's theory of interest and his notion of involuntary unemployment as an equilibrium phenomenon. Keynes's arguments reflecting the belief that zero interest and non-scarce capital are the relevant standards for judging the actual performance of a labor market in a capitalist system have to be transformed into arguments offered by interpreters that, under capitalism, an excess supply of labor is consistent with macroeconomic equilibrium.

The unidirectional argument from interest to employment is most easily seen in Keynes's view—not held consistently throughout the *General Theory*—that the rate of interest is determined by monetary factors alone.[17] Hoarding money as a way of avoiding the adverse changes in the rate of interest that are characteristic of a capitalist system accounts for both the existence of the interest rate and its unduly high level. Keynes seeks to keep the interest rate free of any significant nonmonetary influences, such as underlying time preferences and resource constraints, in order to keep his analytics consistent with his imagined world, in which the elimination of risk—and hence the elimination of the desire to hoard money as a means of avoiding risks—leads directly to a zero rate of interest. Here Meltzer fails to make full use of his social-philosophy sieve: the Hicks-style simultaneous determination of interest and income falls through the sieve; the

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purely monetary theory of interest remains. But Meltzer (149) simply remarks that Keynes "may have been confused on this point."

The second symptom of an unbridgeable gap between Keynes and his followers is their treatment of the notion of unemployment. Divorced from Keynes's comparative-systems analysis, the "equilibrium level of involuntary unemployment" is a phrase at war with itself. Under a wide variety of assumptions, the root notion that the labor market fails to clear is either clearly false or trivially true. So long as an excess supply of labor puts some downward pressure on the wage rate, the notion is clearly false. The market process through which labor supply and labor demand are brought into balance is still working; equilibrium is yet to be attained. If it is specified that the wage rate is above its market-clearing level and cannot adjust downward, then the labor market's failure to clear and the corresponding unemployment follow trivially. It is unobjectionable, of course, to argue that labor markets—as well as most other markets—do not clear instantly and that the market process through which they eventually do clear may involve a substantial amount of unemployment. But striking a balance in this way between a clear falsehood and a trivial truth produces a commonplace, as Meltzer (255–56) notes, that predates Keynes's earliest contributions to macroeconomic theory.

Too many interpreters follow Keynes in his obscurity rather than in his comparative-systems analysis and leave as an unsolved mystery why reductions in expenditures on output and hence reductions in labor demand should result in involuntary unemployment rather than in a reduced wage rate. Why doesn't the wage rate adjust to existing supply and demand conditions? (I remember Milton Friedman raising this question repeatedly at the 1986 conference.) Keynes's Chapter 19, to which some interpreters attach so much importance, suggests that a reduced demand for labor does cause the wage rate to adjust downward, but that it causes prices to adjust downward as well, such that the *real* wage rate remains unchanged. Real-wage stickiness follows from wages and prices that are either separately sticky or jointly variable. Nominal stickiness may not be crucial to the argument, but then real stickiness is. So, why doesn't the *real* wage adjust to existing supply and demand conditions? For most interpretations of Keynes, the answer to this question and hence the cause of so-called involuntary unemployment remain obscure. The mystery was identified early on by Frank Knight: "To explain unemployment, Mr. Keynes first *assumes* (a) unemployment, and (b) such a price situation, and (c) such a

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mode of operation of the price mechanism, that growth in employment is blocked. This blocking is the fundamental mystery."[18]

To prevent this enduring mystery from blocking the development of Keynesian economics, most modern interpreters have adopted the pre-Keynesian commonplace notion of unemployment. Changes in market conditions may involve a substantial excess of labor supply over labor demand during the process of adjusting to a new equilibrium. Though not itself true to the *General Theory*, this reconstruction serves two purposes. First, it saves Keynes from himself: it saves him from his belief that a society with zero interest and non-scarce capital is an achievable goal and a relevant standard for judging the performance of capitalist economies. Second, it serves as a basis for dealing with those of Keynes's insights that are believed to be worth developing—insights about the precarious circumstances in which business firms form long-term expectations and about the interconnectedness of the loanable-funds market and the labor market. These issues will be discussed below in connection with the separate views of Shackle and Leijonhufvud.

Reconstructions of the *General Theory* that treat unemployment as a disequilibrium phenomenon necessarily involve a shift of emphasis from the secular component of unemployment to the cyclical component. In fact, cyclical unemployment and involuntary unemployment have come to mean the same thing. Since the secular component of involuntary unemployment, which Meltzer argues is the more important of the two, is squarely based on Keynes's comparative-systems analysis, its appearance in modern reconstructions would require that the supply of and demand for labor reflect current market conditions, but at the same time a wage rate that somehow reflects the market conditions in Keynes's imagined world. Unemployment, then, would persist until the wage rate is brought down from its other-worldly level or until our actual society is transformed into Keynes's imagined one. To my knowledge, such a hybrid construction involving a mysterious mix of comparative-systems and market-process analysis has not yet occurred to Keynes's interpreters. Instead, the focus has shifted to the cyclical component, where, in a capitalist system, downward shifts in the demand for labor can produce unemployment so long as the wage rate continues to reflect the pre-existing market conditions.

The significance of the difference between the comparative-systems Keynes and the dynamics-of-disequilibrium Keynesians is becoming increasingly evident with the development of New Keynesianism, which differs from New Classicism only in its rejection of the assump-

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tion of instantaneous market clearing. New Keynesian John Taylor puts the matter straight in his treatment of the concept of involuntary unemployment: "In retrospect, Keynes would have added clarity to his discussion by unbundling his theory [of deficient aggregate demand] and his definition of involuntary unemployment."[19] In other words, (1) why aggregate demand and hence the demand for labor are lower than they might otherwise be, and (2) why that relatively low demand manifests itself as unemployment rather than a correspondingly low wage rate, are separable questions. Meltzer focuses on the first issue, about which Keynes had a unique perspective; the New Keynesians focus on the second issue, about which Keynes had no special insights to contribute. We—and Meltzer—can easily accept Taylor's retrospective judgment here, but not without wondering if clarity on this point wouldn't have cost Keynes much of his influence.

Shackle's and Leijonhufvud's Keynes Reconsidered

Two particular modern interpreters are worthy of a reconsideration: Shackle, whose Keynesian Kaleidics focuses on the uncertain business environment in which long-term expectations are formed, and Leijonhufvud, who tries to make Keynes out as a developer of macroeconomic disequilibrium theory in the tradition of the Swedish school.[20] Although Meltzer is critical of the these two interpretations—overly so in my judgment—they actually come as close to Meltzer's own interpretation as their market-process, disequilibrium theorizing permits.

Shackle has a kinship to Meltzer in seeing uncertainty as the root cause of macroeconomic problems. Shackle's Keynes argues from the pervasive uncertainty in a market economy to the unemployment that may accompany unexpected changes in market conditions. Shackle grounds this interpretation in Keynes's belief that long-run expectations have little basis in objective reality. But the expectations held by the business community are not so much irrational as arational. Further, and still following Keynes, a given state of expectations can for a time be upheld as a matter of convention. Expectations are contagious and thus self-reinforcing. According to this construction, the economy can prosper so long as the collectively held expectations hold up—even though the expectations themselves have long ceased to have, if ever they had, any solid grounding.

But doubts can creep in. Some businesspeople in a reflective mood

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may perceive the precarious nature of things. And doubts are contagious, too. One state of expectations can be suddenly superseded by another, more pessimistic state. Asset markets as well as labor markets would then be in turmoil until the pattern of prices and wage rates is brought into line with the new state of expectations. Shackle's kaleidoscope, whose changing patterns of cut glass reflect the changing patterns of prices and wage rates, captures Keynes's view of a market economy. No one pattern can be designated as the correct one or as representing underlying realities more accurately than any of the others. And if shaken by doubts that have overcome the business community, the new pattern of prices and wage rates is not predictable in its particulars from even the fullest knowledge of the old.

Investors in the precapitalist era, when markets for the means of production were thin or nonexistent, can be compared to investors in the modern capitalist era, which is characterized by well-organized capital markets. Staying in business or continuing with an investment project was a matter of long-term commitment in the earlier era and of short-term confidence in the modern era. In the spirit of Shackle's Keynes, we can say that businesspeople, once wedded to their businesses by custom, are able to break loose from them as capital markets develop. Then, in the absence of any commitment or direction, they follow one another over the nearest cliff—losing their grounding altogether. But like the coyote in the Saturday morning cartoons, they can walk on air so long as nobody looks down. When one looks down, though, they all look down, and down they go. With a comprehensive socialization of investment, the businesspeople, in effect, are individually rewedded to their respective businesses and hence collectively rewedded to the underlying economic realities. This vision of the market economy inspired by Shackle's Keynes is wholly consistent with Keynesian Splenetics.[21]

Leijonhufvud's kinship to Meltzer lies in his portrayal of the connection between the loanable funds market and the labor market. Meltzer, interpreting Keynes in a comparative-systems framework, would say that the failure of the loan market to clear at a zero rate of interest causes the labor market to clear at a low level of employment; Leijonhufvud, interpreting Keynes in a disequilibrium framework, would say that the failure of the loan market to clear at an interest rate that reflects the underlying economic realities can cause the labor market not to clear at all. The loan market and the labor market are "crosswired," to use Leijonhufvud's own imagery, such that a change in conditions in one market has its greatest impact on the other.[22]

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For illustration, suppose the economy is functioning at its full-employment level, meaning that the wage rate clears the labor market and that labor supply and labor demand accurately reflect underlying economic realities. Now suppose that the rate of interest rises because of speculation not grounded in the fundamentals. A higher interest rate means a lower level of investment, which means a reduction in labor demand. The old wage rate is now too high. According to Leijonhufvud's Keynes, however, it is the interest rate and the corresponding demand for labor—and not the wage rate—that are inconsistent with underlying economic realities. Keynes's assumption that the wage rate will not fall becomes a recommendation that it not be allowed to fall.[23] It is the interest rate—and more fundamentally, the uncertainties that gave rise to the destabilizing speculation—that needs attention.

Identifying the interest rate as the source of the problem does not silence criticism in the spirit of Friedman. Wouldn't a fall in the wage rate be a solution to the problem even if an excessive wage rate is not—in some ultimate or general-equilibrium sense—the source of the problem? A reduced wage would alleviate the immediate problem of unemployment and may well constitute the first phase of a market process that moves both labor and asset markets toward equilibrium more broadly conceived. Meltzer's Keynes might respond that the prospect of falling wages and falling prices, which would eventually bring the real wage rate in line with labor-market conditions that had been distorted by speculation in asset markets, simply adds to the uncertainties that give rise to destabilizing speculation in the first place.

The interpretations of Shackle and Leijonhufvud, allowing for the differences in analytical frameworks, are largely consistent with Meltzer's treatment of the cyclical component of involuntary unemployment. But rather than acknowledge the similarities and draw strength from them, Meltzer simply criticizes Shackle for reading irrational expectations into Keynes and criticizes Leijonhufvud for misreading Keynes as a Swedish-style disequilibrium theorist.

Keynes, Meltzer, and Meltzer's Keynes in Perspective

It is probably fair to say that if Meltzer undersells his own interpretation of the *General Theory*, he oversells Keynes. In his introductory chapter Meltzer (12) claims to share in many of Keynes's social views

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but to reject Keynes's perception of government. In his concluding chapter Meltzer offers the summary assessment that "Keynes was an economist, one of the greatest" (302). He then briefly discusses seven problems in the *General Theory*, which he categorizes—somewhat artificially—as flaws in Keynes's analytical framework (1 through 3) and flaws in Keynes's vision of the world (4 through 7). Thus, Keynes (1) fails to explain unemployment, (2) is cavalier in his treatment of expectations (positing elastic or inelastic expectations as suits his immediate purpose), and (3) neglects the effect of inflation on money demand. He (4) omits considerations of international trade, (5) seems unconcerned generally about the consequences of inflation, (6) makes the questionable judgment that the state can reduce interest to zero, and (7) is too willing to sacrifice freedom (311).

At this point, let me simply note the incongruity in claiming that Keynes was a great economist and then listing as one of his analytical flaws a failure to explain unemployment. In accordance with most any interpretation except Meltzer's, the failure of the *General Theory* to explain unemployment would be catastrophic. Only in the comparative-systems context of Keynesian Splenetics, which most Keynesians have overlooked and the rest have rejected, is the failure to explain unemployment—in the sense of an excess supply of labor—inconsequential to the general thrust of the theory. But the general thrust of Keynesian Splenetics hinges critically on the ideas of zero interest and non-scarce capital, which involve such a serious flaw of vision as to be rejected out of hand under most all interpretations.

Meltzer claims in his early article, again in his response to critics, and still again in his book, not to be offering anything more than a "different" interpretation of Keynes—to be added, presumably, to the many existing ones. He emphasizes that no single one is *the* correct interpretation. Yet by demonstrating the importance of what I have dubbed Keynesian Splenetics, Meltzer penetrates to the core of Keynes's most firmly held beliefs, puts other interpretations of Keynes in clear perspective, and accounts for the decades of difficulties in getting Keynes straight. In the judgment of this reviewer, Allan Meltzer's insights and scholarship will contribute importantly to the writing of the final chapter of the Keynesian episode.

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NOTES

1. Allan H. Meltzer, "Keynes's *General Theory*: A Different Perspective," *Journal of Economic Literature* 19, no. 1 (March 1981): 34–64, and idem, "Interpreting Keynes," *Journal of Economic Literature* 21, no. 1 (March 1983): 66–78.
2. See, for examples, Lorie Tarshis, Review of *Keynes's Monetary Theory: A Different Interpretation, Journal of Economic Literature* 28, no. 3 (September 1990): 1203–4, and Marcello de Cecco, "Keynes Revived, a Review Essay," *Journal of Monetary Economics* 26 (1990): 179–90. In contrast, see Joseph T. Salerno, "The Development of Keynes's Economics: From Marshall to Millennialism," *Review of Austrian Economics* 6, no. 1 (1992): 3–64, in which Salerno credits Schumpeter and Meltzer for seeing Keynes's analytics as a reflection of his early vision and then offers his own account of both the continuity and the discontinuity in the development of Keynes's thinking.
3. John Maynard Keynes, *The General Theory of Interest, Employment, and Money* (London: Macmillan, 1936).
4. The sharpest contrast in this respect is that between Frank Knight, "Unemployment: And Mr. Keynes's Revolution in Economic Theory," *The Canadian Journal of Economics and Political Science*, 3 (February 1937): 102–23, and Paul A. Samuelson, "The General Theory," in Robert Lekachman, ed., *Keynes' General Theory: Reports of Three Decades* (New York: St. Martin's Press, 1964), 315–31.
5. Anatol Murad, *What Keynes Means: A Critical Clarification of the Economic Theories of John Maynard Keynes* (New York: Bookman Associates, 1962).
6. After presenting his own rendition of Keynesian macroeconomics, Robert Clower makes the unqualified claim that "Keynes either had [Clower's rendition] in the back of his mind, or most of the General Theory is theoretical nonsense." Clower, "The Keynesian Counter-Revolution: A Theoretical Appraisal" in idem, ed., *Monetary Theory* (Middlesex: Penguin Books, 1969), 284.
7. John Maynard Keynes, "The General Theory of Employment," *Quarterly Journal of Economics* 51 (February 1937): 209–23.
8. Meltzer (255–66) deals with the rigid-wage angle on the *General Theory*, but New Keynesianism per se is too new to have been included. This strand of thought is sometimes dated to a paper published the same year as Meltzer's book: Laurence Ball, N. Gregory Mankiw, and David Romer, "The New Keynesian Economics and the Output-Inflation Trade-off," *Brookings Papers on Economic Activity* 1 (1988): 1–65. With arguments anchored in the pre-Keynesian equation of exchange (MV = PQ), the New Keynesians concern themselves with the question of the effect of changes in spending (Money multiplied by its Velocity of circulation) on inflation and output (as measured by the Prices of goods and the Quantities of goods bought and sold). Because of its attention to changes in MV and the consequent changes in P and Q, New Keynesianism might be better

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described as Old Monetarism. (That this new and important school of macroeconomic thought is seriously mislabeled was pointed out to me by Leland Yeager.)

9. Z-theory is spelled out in Axel Leijonhufvud, "The Wicksell Connection: Variations on a Theme," in idem, *Information and Coordination: Essays in Macroeconomic Theory* (Oxford: Oxford University Press, 1981), 131–202.
10. Keynes, *General Theory*, 374–78.
11. The three pre-*General Theory* articles are included in Keynes, *Essays in Persuasion* (New York: W. W. Norton, 1963), 323–38, 312- 22, and 358–73; the post-*General Theory* article is included in Keynes, *The Collected Writings of John Maynard Keynes*, vol. 10, ed. Donald Moggridge (London: Macmillan, 1972), 433–50.
12. John R. Hicks, "Mr. Keynes and the 'Classics': A Suggested Interpretation," *Econometrica* 5 (April 1937): 147–59. Meltzer (129–34) argues in effect that Keynes's reservations about Hicks's interpretation are more significant than generally recognized.
13. Keynes, *General Theory*, 13, 14, and *passim*.
14. Ibid., 379.
15. Ibid., 189. In correspondence, however, Meltzer has reminded me that the zero rate of interest is a common feature of classical economics. According to David Ricardo and J. S. Mill, the economic forces that pit labor against capital will eventually eliminate all interest income.
16. This role for protectionist policies is most explicit in Keynes, "National Self-Sufficiency," *Yale Review* 22 (June 1933): 755–69.
17. "The current rate of interest depends . . . not on the strength of the desire to hold wealth but on the strengths of the desires to hold it in liquid and in illiquid forms respectively, coupled with the amount of the supply of wealth in one form relative to the supply of it in the other." Keynes, *General Theory*, 213. Meltzer's interpretation of this passage is what caused one reviewer to part company with him. See Tarshis, 1203–4.
18. Knight, "Unemployment," 102.
19. John B. Taylor, "Involuntary Unemployment," in John Eatwell, Murray Milgate, and Peter Newman, eds., *The New Palgrave Dictionary of Economics*, vol. 2 (London: Macmillan, 1987), 1000.
20. G. L. S. Shackle, *Keynesian Kaleidics* (Edinburgh: Edinburgh Press, 1974); Axel Leijonhufvud, *On Keynesian Economics and the Economics of Keynes* (Oxford: Oxford University Press, 1968); and esp. idem, "The Wicksell Connection," in his *Information and Coordination* (n 9 above).
21. Keynes himself argued in terms of the institution of marriage: "The spectacle of modern investment markets has sometimes moved me towards the conclusion that to make the purchase of an investment permanent and indissoluble, like marriage except by reason of death or other grave cause, might be a useful remedy for our contemporary evils." Keynes, *General Theory*, 160.

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22. Leijonhufvud, "The Wicksell Connection," 177–87.
23. "It is more expedient to aim at a rigid money-wage policy than at a flexible policy responding in easy stages to changes in the amount of unemployment." Keynes, *General Theory*, 266.

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Richard Ashcraft

LIBERALISM AND THE PROBLEM OF POVERTY

From the seventeenth to the mid-nineteenth centuries, the language of natural law and natural rights structured the commitment of liberalism to the development of both a market society and democratic political institutions. The existence of widespread poverty was seen, at various times, as a problem to be resolved either by an expanding commercial/capitalistic society or through democratic political reform. As Thomas Horne shows in Property Rights and Poverty, *liberalism as a political theory has, from its origins, been deeply committed to (at least a minimalist) social welfare policy. Nevertheless, not only have the dimensions of the problem of poverty increased with the growth of democratic capitalist society, but also, viewed from an historical perspective, it is the problem of poverty that exposes the fundamental tensions at the heart of liberal political theory.*

Thomas Horne's *Property Rights and Poverty: Political Argument in Britain, 1605–1834* (Chapel Hill: University of North Carolina Press, 1990) doggedly pursues the thesis that "the characteristic assumption of liberal political thought—that people have natural rights to property—has included a recognition of both inclusive and exclusive property rights" (258). That is, the liberal meaning of property rights has always been embedded in a theoretical discourse and in social practices that presupposed the use of common resources for the welfare of all members of

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Richard Ashcraft, Department of Political Science, University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024–1472, telephone (310) 825–4331, telefax (310) 825–0778, is the author of *Locke's Two Treatises of Government* (Unwin Hyman, 1987) and *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton, 1986).

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society as an a priori condition for an individual's exclusive claim to do with his property what he chooses. The idea that some absolute right to property lies at the heart of liberalism as a political theory, or that private property is a right that the individual holds *against* the government or the community is, and always has been, a myth. Horne's book demonstrates conclusively, if rather tediously, that such a viewpoint simply has no historical foundation.

As the subtitle indicates, Horne analyzes the role of property rights in British political debate between 1605 and 1834. As he recognizes, this analysis necessarily requires a consideration of the ideas of a wide variety of thinkers. In addition to a few "great" political theorists, journalists, lawyers, and clergy, numerous relatively obscure individuals participated in the discussion of the meaning and importance of property rights; according to some unstated principle of equity, Horne allots each thinker a certain number of pages in which to present his views. *Property Rights and Poverty* is thus a hodge-podge, a sequential stringing together of thumbnail sketches of X's ideas, followed by Y's perspective, followed by Z's arguments, and so forth. As one eighteenth-century critic remarks concerning the ideas of a contemporary writer (duly allotted four pages by Horne), "it is . . . impossible not to laugh at the absurd trash which is seriously propounded" as a contribution to the debate over property rights (196). Nothing so injudicious, of course, is said by Horne about the ideas of anyone discussed in his book. Indeed, critical analysis, theoretical insights, or innovative arguments are hardly to be looked for in *Property Rights*.

Sometimes the thinkers whose ideas Horne presents demonstrate such characteristics, but the style of *Property Rights* is so monotonic that it is not easy to separate the good from the bad or the ugly. Epoch-making arguments are sandwiched between pedestrian views or the repetition of previously made points. Arguments that are logically inconsistent or that have no empirical foundation are as benignly and uncritically put before the reader as are the most historically profound or unique arguments. Although the most important thinker—for reasons that will become clear as the essay proceeds—John Locke, is given a rather generous 18 pages (seven more than Lord Kames and five more than Frances Hutcheson), the pages devoted to Adam Smith's *Wealth of Nations* are disappointingly brief and uninformative. Given the style adopted by Horne, it is difficult to avoid thinking that more attention and space should have been given to some thinkers and much less space to others.

As I shall try to demonstrate, this is not a purely stylistic problem,

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since the approach Horne has adopted effectively constrains the way in which the substantive argument of *Property Rights* is formulated. Horne's intention is to demonstrate that the Macpherson-Strauss-Nozick view of (Lockean) liberalism's defense of absolute property rights is an inaccurate and, therefore, inadequate interpretation of two centuries of discourse concerning property rights. Given this objective, Horne's wide-ranging survey of the literature dealing with property rights effectively exposes the absence of empirical support for the claims made on behalf of such a conception of property rights. Moreover, Horne's positive claim that liberalism's concern for the welfare rights of the poor is not a recent modification of traditional liberalism but was, from the outset, a constitutive feature of liberalism is also an important corrective to certain contemporary interpretations of liberalism. In both respects, *Property Rights and Poverty* is an important book, and, as Horne rather modestly notes, it will certainly have an impact upon the contemporary debate between communitarian and libertarian liberals, and upon the defenders and the critics of the welfare state as an institutional response to contemporary social problems.

In the critique of *Property Rights and Poverty* that follows, I have tried to do two things. First, accepting the framework adopted by Horne, I have suggested what I believe are missed opportunities, inadequate interpretations of particular thinkers, or the failure to develop certain arguments that, on the whole, would have strengthened the thesis pursued by Horne. Second, and in my view of greater interest to the readers of CRITICAL REVIEW, I have argued that the debate concerning property rights and poverty has a historical significance that far transcends Horne's objective of refuting a particular mistaken view of liberalism. As I shall try to show, the problem of poverty provides an axis from which to examine the internal tensions of liberalism as a political theory committed to the beliefs and institutions that sustain a market economy and a democratic society.

The Natural Right to Subsistence

Because Grotius is supposed to have "created the modern natural law vocabulary" as it relates to property, Horne begins with a discussion of his ideas (3). In some respects this is understandable, since certain philosophical aspects of the problem of property rights do arise out of Grotius's attempts to defend the interests of the Dutch East India Company. Yet, since the primary focus of *Property Rights* is upon

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whether and how political power should be employed to solve the problem of poverty—an issue which is not of central concern to Grotius—Horne's starting point becomes increasingly irrelevant as his argument proceeds, a matter to which I shall return. Moreover, even in the construction of a philosophical framework with respect to property rights, it is Locke, not Grotius, who is the central figure of Horne's argument (176).

Since God gave the earth to all in common, the problem for Grotius (and Locke) is to explain how exclusive private rights to property developed out of this original condition, and to do so within a natural law perspective. The primary objective of the Law of Nature, viewed as the intentional will of God, is, as Locke put it, the preservation of mankind, to which all specific objectives and human actions are subordinately directed.[1]

Locke's argument combines normative and empirical elements. On the one hand, as he explained in his Oxford lectures on the Law of Nature, we are under a constant moral obligation to feed and clothe the poor, although this obligation can be fulfilled only when we possess the goods necessary to provide the subsistence that the poor require.[2] The natural law obligation to preserve mankind makes it our duty to provide for the relief of others, and it supplies them with a right to the "surplusage" of our goods when their need for subsistence requires it.[3] There are two ways in which this fundamental point may be expressed: in individualistic terms or as a constitutive feature of social relations.

In general, Horne focuses upon the individualistic formulation—"the right of necessity," as it was called—and he therefore misses a number of important theoretical features of the social formulation of subsistence rights. The right of necessity allows a starving individual to take from another individual what s/he requires for subsistence. It is an expression of "that ancient right of using things, as if they still remained in common," and it takes precedence over exclusive claims to the use of property, *whatever the form of society* (15). But, just as this action cannot be executed between individuals where each has only what is sufficient to preserve himself—I am not bound to sacrifice my life for a drowning man, as Pufendorf put it—so the right of necessity could hardly serve as a general feature of social relations except in a society that has accumulated a surplus sufficient to provide subsistence for all of its members. The practice of "poor relief" as a social policy, in other words, presupposes certain empirical assumptions concerning the economic development of society.

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Locke's description of the state of nature in its earliest social form, prior to the invention of money, is premised upon the assumption that individuals confined "their desires within the narrow bounds of each man's small property." This early stage of the state of nature is characterized by Locke in terms of "the equality of a simple poor way of living."[4] In this stage, the subsistence needs of individuals, collectively speaking, can be and are met: the Indians in America serve as an illustrative example of this point.[5] This means that no form of society that develops beyond the most primitive state of social relations can allow individuals to starve or to exist without housing, clothing, and certain basic needs and be in conformity with the purposes of the Law of Nature.[6] No post-subsistence form of society can claim that it does not possess the "surplus" necessary for the preservation of all members of the society, since, Locke insists, these empirical conditions can be met in the earliest form of society. Of course, individuals qua individuals can become destitute due to any number of contingent conditions in any society, but the truly radical claim advanced by Locke, as we shall see, is that poor relief is a socially constitutive and necessary feature of *any* legitimate society, since societies are only legitimate to the extent that they realize the purposes and objectives of natural law.[7]

Hobbes presented a very different picture of the state of nature, and most of those who attacked his description of the human condition did so for theological reasons; that is, they believed Hobbes's account of the natural condition of mankind was an affront to the intentional designs of the Creator. However, Robert Filmer was shrewd enough to add the empirical observation that a war of all against all only made sense under conditions of the scarcity of food, and this was obviously not the condition of the world in its first ages, a point later echoed by Pufendorf.[8]

Yet, Hobbes recognized the right of necessity as part of his definition of self-preservation; logically, he could not afford not to recognize it.[9] This aspect of Hobbes's argument—self-preservation as a subsistence right—is rarely discussed in the secondary literature on Hobbes, so dominant is the equation of self-preservation with security from violence. Whether collective security can be realized starting from the assumption that individuals aggressively pursue their self-interests is an issue of long-standing controversy. But granting, for the sake of argument, that the renunciation of violence leads to the objectives Hobbes desired, such a covenant certainly does not guarantee sufficient productivity to ensure the survival of the individuals and their families who have placed themselves under the protection of the

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sovereign. Is the sovereign, then, responsible for providing those empirical conditions under which every individual's subsistence needs can be met? The question of whether the sovereign's functional legitimacy as a political ruler depends upon a particular level of social and economic development merits much more consideration than it has received from interpreters of Hobbes's thought. Unfortunately, Horne's presentation of Hobbes's position in unproblematic terms offers no guidance as to the theoretical significance of the social existence of poverty to the issue of political legitimacy. Nevertheless, there is sufficient evidence in the writings of Locke and other seventeenth-century thinkers to indicate that a recognition of the interrelationship between subsistence rights and the security of the social order did not have to await the appearance of mass poverty in the nineteenth century.

Property and Political Power

Since "the natural right to property" did not give the individual "a right to exclude the public power of the community" from employing that property to advance the common good (17), participants in the seventeenth- and eighteenth-century debate over property rights naturally raised the question, Under what conditions could "the public power of the community" be legitimately invoked with respect to the property rights of an individual? What, if anything, distinguished the arbitrary seizure of someone's property from the legitimate claim "the community has over the . . . estates of all its members for the common benefit" (18)? Grotius's own theory, which "supplied a defense of absolutism and slavery" (11), did not play a major role in the history of British political thought in answering this question as to how public power should be constituted, though Grotius did concede that "a people may choose what form of government they please" (18). Thus, parallel to the realization of the subsistence/welfare provisions of the Law of Nature, the problem of the form and distribution of political power necessary to ensure that natural law claims were met and that controversies amongst property holders were resolved equitably also required a solution.

As both James Tyrrell and Locke argued, "one of the main ends of a supreme power among us," i.e., a legislative power or government as "umpire," is "to decide controversies about property." But in a subsistence society, where individuals act "only to provide mere necessaries

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of life, as they never have any superfluities, so they have no disputes about them," and therefore, Tyrrell concluded, "government" was "of no use" to them.[10] Locke advanced the same argument, maintaining that "want of people and money gave no temptation to enlarge their possessions of land, or contest for wider extent of ground," which, in turn, meant that there was "no contest betwixt rulers and people about governors or government."[11]

In short, the problem of how political power should be distributed arises in a post-subsistence society because only in such a society are there "controversies" about property and how it should be used. Now, in *theory*—Grotius's position—there are many different forms of government one might imagine that would have to deal with this problem. But Locke, Tyrrell, and Algernon Sidney wrote within a specific political context where the choice was between absolute monarchy and a constitutional form of government which included, at a minimum, an elected legislative body. Since, as Locke put it, absolute monarchy is no form of civil society at all, and people could *only* think themselves in civil society if they had a legislature—Senate or Parliament—there is little doubt about where he (and Sidney) stood on the necessity of representative institutions as a structural feature of a constitutional form of society.[12] In other words, although political power is structured by the type of property ownership in society, it is not in any straightforward or simple sense *derived from* property ownership by any particular group of individuals. The importance of this proposition to the development of liberal political theory will become clearer as the essay proceeds.

The Levellers on Market Society and Democracy

But we have gotten too far ahead of ourselves in the story, for the levellers were the first to insist upon the importance of elected representative institutions as a safeguard of the natural rights of individuals. They were also, and not coincidentally, deeply concerned with the needs of the poor and, more generally, with the use of natural law precepts as a standard for social welfare policies to be enacted by the government. The one and one-half pages devoted to the Levellers by Horne is not only a seriously inadequate treatment of their ideas, but more importantly, it is *their* arguments and not those of Grotius which should have constituted the starting point and the core of the position elaborated in *Property Rights and Poverty*.

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In defending a principle of moral egalitarianism drawn from their sectarian religious beliefs, the Levellers maintained that any individual of "the meanest capacity is fully capable of a right understanding" of "either religion or the laws of the polity."[13] Hence, not only should the parameters of political participation be extended to include such individuals, but also, the Levellers argued, what was required by "the practical and most real part of religion" did not allow for sharp lines to be drawn between religion and "the laws of the polity." For them, all the duties prescribed by the Law of Nature—providing relief for the poor, assisting one's neighbor, or opposing injustice and tyranny—were indistinguishable as moral obligations placed upon the individual.[14] Moreover, they could all be fulfilled through engagement in collective practical action within society.

Since, for the Levellers, the rationality of the individual was premised upon his/her acting in accordance with the precepts of natural law, they could not see what this had to do with owning property. Political power, they argued, was to be employed to provide for the common good, as prescribed by natural law. Protection of property rights might fall under that heading, but (1) ownership of property was merely a contingent relationship and not a sufficient "reason" for an exclusive claim to the exercise of political power; and (2) political power was designed to protect individual and collective rights—free speech, free assembly, free press, trial by jury, religious toleration, etc.—which had nothing whatsoever to do with property ownership. Political rationality was thus both a moral and not an empirically contingent claim and it pertained to social actions that could not be reduced to the acquisition of commodities. This way of viewing things effectively separated political power from property ownership—as both Ireton and Cromwell pointed out in the Putney debates. This is the truly radical dimension of seventeenth-century political thought (and, historically, of liberalism), a point which is continuously missed by Horne and many others whose definition of radicalism is limited to the economic redistribution of property. Not only is this not the political battleground for radicals in the seventeenth century, but a redistribution of property would neither, in itself, guarantee the existence of free speech or religious toleration nor would it extend political power as far as the Levellers wanted, i.e., to those "chimney sweeps" and "mechanics" who owned no property, which were the issues of importance to political radicals.[15]

The Levellers were not opponents of property ownership, market society, or trade. They opposed monopolies, consumer taxes, and pri-

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mogeniture because, they argued, these features of society prevented the market from producing outcomes consonant with the common good. Nevertheless, so long as property ownership is in general conditional upon acting for the common good, there is, for the Levellers, no reason to change the existing distribution of property, notwithstanding its structure of inequality. It is the equal distribution of political power and the social justice arising from communal responsibilities, both derived from a particular understanding of the conceptual linkage between the Law of Nature and political power—not a preoccupation with material benefits or social status—which supplies the axis for the radical dimensions of liberal political thought.

Had Horne grasped this point, his argument in *Property Rights and Poverty* would have been much less confusing than it is. Since it is Locke's reformulation and sophisticated restatement of the Levellers' arguments that supplies "the intellectual foundation for the defenders of welfare rights" (176) as a feature of the development of liberal political theory, Horne's failure to provide an adequate account of the Levellers' attempt to synthesize a commitment to market society with their commitment to democracy returns again and again to haunt him.

Locke on Productive Labor and Market Society

What Horne says about Locke is sensible as far as it goes, but his reluctance to press home the radical significance of Lockean ideas conveys the (false) impression that this radicalism is merely a feature of the contingent political and historical circumstances of late eighteenth- and early nineteenth-century Britain, and not an expression of the internal (conceptual) tension with respect to the theoretical commitments of liberalism to moral egalitarianism and democratic social practices on the one hand and to property rights, trade, and market society on the other. As I have suggested, this tension was present in the ideas of both the Levellers and Locke. There is in Locke's thought, Horne observes, "an interest in economic growth and in the prevention of starvation that went far beyond" that of many of his contemporaries (48). Yet Horne's account of Locke's position fails to clarify how or why that position became the baseline for eighteenth and nineteenth-century political radicalism.

Locke saw that only labor—and neither possession nor occupation (Grotius)—supplied a moral basis for property rights claims (49). In the first place, this was so because God "commanded man also to

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labor" and it is "in obedience to this command of God" that the individual who "subdued, tilled and sowed any part" of the land thereby gained the "title" and "authority" to claim ownership "which another had no title to, nor could without injury take from him."[16] Locke believes that labor is the means by which God's intention to preserve mankind—the Law of Nature—is in practice executed. For reasons that will become clear, neither possession nor occupation have any *necessary* connection to the purposes of natural law, and both are, therefore, for Locke, insufficient justifications for a rights claim to property. For, in Locke's terminology, a "natural right" is a necessary means by which a natural law obligation is fulfilled. Thus, in laboring, the individual "followed the will of his Maker," and, except for the case of immediate starvation, which sets aside the activity of laboring, no one can advance a higher natural law claim to property than that.[17]

Second, Locke's concept of a "person" as an individual capable of taking responsibility for his actions and possessions is his definition of a "freeman" in the state of nature.[18] If possession is acquired in an object through "mixing one's labor" with it, it is because Locke believes that picking an apple from a tree is an action for which a particular person can be held responsible, as much as if that person struck another individual or set fire to his neighbor's house. There is nothing especially mysterious or metaphysical about laboring as a social action. So much bad philosophizing on this subject exists in the canon on Locke that it would require a Herculean effort to clear it all away. The essential point is that, for Locke, social actions are assessed in terms of the moral precepts of natural law. Rights claims to property have to satisfy the normative and empirical conditions Locke associates with "the preservation of mankind" as the objective of the Law of Nature. Thus, when Locke considers a genuine conflict of property rights, as, for example, between the claims of a just conqueror and the subsistence claims of the women and children of the soldiers of the defeated army, he argues that the latter's rights take precedence over those of the conqueror. This decision, he explains, follows from a consideration of the Fundamental Law of Nature which decrees that all individuals, or as many as may be, ought to be preserved.[19]

In addition to this rather traditional moral framework, according to which the social action of poor relief (and other social actions) are justifiable, Locke develops an empirical/historical argument in Chapter Five of the *Second Treatise* with respect to property that makes it possible for the obligations of the Law of Nature to be fulfilled. Again,

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this argument is expressed not in individualistic but in social terms; that is, as a progressive development of types of societies relative to the form and distribution of property. The crucial concept that structures Locke's reading of history is productive labor. The latter is viewed both teleologically, as part of a divinely instituted human condition, and in the simple descriptive context of the production of commodities:

> God gave the world to man in common, but since he gave it to them for their benefit . . . it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational.[20]

Locke's God is neither a waster of resources nor a deity unconcerned with the practical benefits of action. Thus, Locke maintains that

> the provisions serving to the support of human life, produced by one acre of enclosed and cultivated land are . . . ten times more, than those which are yielded by an acre of land, of an equal richness, lying waste in common. And therefore he that encloses land and has a greater plenty of the conveniences of life from ten acres, than he could have from a hundred left to nature, may truly be said to give ninety acres to mankind.[21]

Productive labor both empirically benefits mankind and normatively fulfills God's design to preserve mankind. Conversely, those who are idle, who do not labor productively, do not further the objectives of natural law. Such a perspective, I have argued, constitutes a moral critique of those landlords who waste their property by not using it productively.[22] Horne does not raise this point in his exposition of Locke's thought; indeed, like C. B. Macpherson, he fails to grasp the importance of productive labor because he is more concerned to identify Locke's intentions with a justification of large landholdings in seventeenth-century England (54).[23]

However, when Frances Hutcheson uses Locke's argument, Horne maintains that it is meant to be a critique of the Scottish landowning aristocracy, notwithstanding the fact that Hutcheson's political position is much more conservative than that of Locke (81). Later, Horne credits Thomas Rutherforth—who was even more conservative than Hutcheson—with recognizing the "radical possibilities within Lockean theory" when he employs Locke's argument as a critique of aristocratic landlords (125). Still later, William Paley understood the argument as an attack upon large landowners (140–41). William Ogilvie and Thomas Spence both pursued Locke's argument, which they under-

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stood to be a radical critique of landlords (217,230,239). Thomas Hodgskin, William Thompson, and the Chartists cited these passages from Chapter Five of the *Second Treatise* as an attack upon unproductive landowners (238,242–43). In other words, the distinction between the productive use of labor and the idleness of large and/or absentee landlords was, as Horne rightly observes, "central to the radical political philosophy of the late eighteenth and nineteenth centuries" (204). But, as for the inventor of this distinction—Locke—it does not appear to Horne to be a useful axis from which to analyze *his* thought.

Horne's failure to recognize this crucially important aspect of Lockean thought arises, in part, from his conflation of "occupation" with "labor" as conceptual sources for "property." He cites a sentence from Pufendorf in which no distinction is made between occupancy, enclosure, or tilling the land (51). Yet Locke is quite clear that there *is* an important distinction between merely occupying or enclosing land and employing one's labor upon it. He argues that if someone in the state of nature encloses land but allows it to remain uncultivated, then the land, "notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other" individual who was willing to employ his labor on the land.[24] Hence, whereas the emphasis of Horne (and Macpherson) is upon Locke's defense of the largeness of property ownership, Locke's argument is directed toward the productive use of labor and land, regardless of the size of property holdings.[25]

This leads Locke, but not most of his interpreters, to ask, What is the meaning of productive labor once the needs of familial consumption have been met? For it is clear that production beyond immediate consumption, in the case of perishable commodities, would lead to their waste through spoilage. Such a use of common resources designed for the welfare of all is, Locke argues, a violation of the Law of Nature.[26] This impasse, in which the meaning of productive labor is tied to use, consumption, and subsistence needs, is overcome through the exchange of goods, i.e., trade. The invention of money facilitates this activity, but the point Locke insists upon, not only in the *Two Treatises*, but also in his economic writings and in his unpublished notebooks, is that trade is beneficial to everyone in society.[27] Trade increases the riches of society, and thus the prospects for the preservation of all its members; it is therefore in accordance with the objective of natural law. Locke has no doubts that a day laborer in a commercial society is better off than an Indian chief in a subsistence society, a maxim later echoed by Adam Smith in the *Wealth of Nations*.[28] The brilliance of this

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empirical/normative justification of commercial society and its importance to the debate concerning poverty totally escapes Horne's notice.

For Horne, Locke's defense of a commercial society "was secondary to Locke's political purposes in the *Two Treatises*" (55). This is an odd way of compartmentalizing Locke's thought, and it obscures a point of fundamental importance for understanding the discourse of liberalism as a form of political thought. The Whig attack upon absolute monarchy as an inappropriate form of government for England in the 1680s was, as I argued in *Revolutionary Politics*, deeply rooted in a neo-Aristotelian, neo-Harringtonian perspective linking complex forms of property and economic development—the use of money, the rise of cities, trade, and the like—with complex forms of government, that is, constitutions, balancing of powers, popular representation, and so forth. Absolute monarchy, the Whigs repeatedly argued, as a simple form of government belonged to a simple form of society where individuals had very basic needs. In other words, the normative concept of a rational limit upon political power—constitutional government—was empirically grounded in the social relations and distribution of property.[29] In view of the continuing theoretical importance of the relationship between market society and democratic institutions, Locke's theoretical defense of both cannot be so cavalierly brushed aside.

Property and Political Power

Having characterized Locke's argument as a defense of large landowners, Horne is committed to a denial of all "radical" elements in Locke's thought. "Nothing in Locke's formulation," he writes, "suggested redistribution [of property] or constituted an undermining of property rights" (58). Leaving aside the attack upon primogeniture by Locke, the Levellers, and virtually all radicals from the seventeenth to the nineteenth centuries, which would have had the effect of breaking up large and often unproductive landholdings in favor of smaller and more productive units of land, Horne seems to believe that if one did not seek a redistribution of property, the issue of "radicalism" can be set aside. Hence, "radicals" do not appear in *Property Rights* until the 1790s. Such an approach not only makes it impossible to understand the meaning of radicalism in the seventeenth century, it also inhibits our appreciation of the importance of the eighteenth-century attack upon moral egalitarianism as a foundational claim for political radical-

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ism, and it effectively divorces the latter from efforts to bring about political reform.

Yet, by the middle of the eighteenth century, the existence of mass poverty was frequently attributed to the misuse and/or maldistribution of political power, i.e., "bad government." Since poverty is not the consequence of "any natural depravity peculiar to the low people of this country," it was argued, "the causes . . . [of poverty] must be looked for solely in our laws and polity."[30] Hence, radicals could argue for political reform as at least a part of the solution to poverty, even if existing property relations were maintained.

Frances Hutcheson, Lord Kames, David Hume, and Adam Smith all rejected Locke's conceptual linkage between natural law and the exercise of political power. Among the casualties of this severance was an argument linking representative political institutions with the protection of property rights ("no taxation without consent"). Richard Price was one of several radicals who "relied on Locke's linking of property to representation to argue that the only government consistent with the natural and inalienable rights of men was one in which people directed their own actions through freely chosen representatives" (146). The effective use made by James Burgh in his *Political Disquisitions* of Locke's argument in the *Second Treatise* and the importance of that argument to the defense of the American Revolution is well known.[31] Burgh not only linked consent with an elected legislative body, he also relied upon Locke's broad definition of "property" to include the life and liberty of the individual. Thus, everyone had property rights; moreover, everyone paid taxes of some kind. If all individuals were property owners whose consent as taxpayers was required as a precondition for the imposition of taxes upon people by the legislature, then it followed, for political radicals in the eighteenth century, that everyone—including "the laboring poor"—ought to exercise political power, i.e., the franchise.[32]

To a moderate Whig like Josiah Tucker, Locke's principles were "extremely dangerous." Although he disagreed with Major John Cartwright, Price, and Burgh, Tucker conceded that they were right in their interpretation of Locke as a political radical. "According to the principles of Mr. Locke and his followers," Tucker wrote, "the right of voting is not annexed to land." Rather, "personality is the only foundation of the right of voting." Such a view, Tucker (and many others) believed, placed political power in the hands of the poor, making Locke "the idol of all the levellers in England."[33]

But if, as the radicals claimed, the connections between property

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rights and the equal distribution of political power could be defended in terms of liberalism's commitment to representative government, what of liberalism's commitment to market society? This returns us to the problem of poverty, which, by the mid-eighteenth century, had become a very serious problem indeed. Locke's benign confidence that commercial society would produce a surplus sufficient to fulfil the obligation to provide for the subsistence needs of the poor was, as an empirical proposition as well as a social policy, increasingly subjected to attack in the century following his death. Adam Smith was hardly alone in noting the paradox that while the wealth of Great Britain as a whole was increasing, so were the numbers of the poor, whose condition appeared to be worsening.

It is one of the ironies in the history of social thought that while Locke has been sharply criticized by twentieth-century interpreters of his thought for his harsh, Calvinistic, and conservative attitude toward the poor, it was the Lockean argument, as Horne rightly notes, that supplied the foundation for a defense of the right to poor relief throughout most of the eighteenth century. Even Locke's 1697 memorandum on revising the Poor Laws was relatively well known and was cited by several writers as part of their defense of the right of the poor to relief.[34]

Richard Woodward, an Anglican clergyman in Dublin who became concerned with the condition of the Irish poor, wrote several tracts defending the right to poor relief on natural law grounds. In moving from a state of nature to society, Woodward argued, it cannot be assumed—as Locke had observed—that individuals would place themselves in a worse condition than they were in as residents of a state of nature. Hence, no social contract could be valid if the consequence of such an agreement was that individuals, and especially large numbers of individuals, were in a more miserable condition than that which characterized the state of nature.[35] Poverty, another writer argued, placed masses of individuals in "infinitely worse circumstances" than had existed in the state of nature.[36] Since there were no starving multitudes in the Lockean state of nature such as, for example, existed in Ireland, it was difficult not to conclude that society had failed to live up to its (implicit) contractual obligations to the poor. This argument, of course, relied upon a particular interpretation of natural law advanced by the Levellers and by Locke. As Woodward put it, every individual has a "claim on the community" for a portion of "the public patrimony" necessary to sustain his family. How, Woodward asked, could property owners expect their "right" to prop-

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erty to be recognized "unless they consent in return to provide for the subsistence of the poor"? In fact, he warned, if society failed to meet its obligations to the poor, they might reasonably conclude that their obligation to obey the laws of society ceased, and, presumably, they were then returned to some version of the state of nature.[37]

Horne blithely comments that Woodward's position "never added up to a radical critique" of society (132–34), but, in the context of the social conditions in Ireland and England in the 1760s and 1770s, this seems a very naive interpretation of a political culture in which the radical dimensions of Lockean political thought were being consciously defended and attacked. Of course, when William Cobbett made the same argument 50 years later, joining the right to poor relief with the right to resistance if society fails to supply the former, Horne recognizes it as a radical critique of society (230–32).

The Conservative Critique of the Rights of the Poor

The artificiality of grouping all the conservative thinkers in Chapter Five and all the radicals in Chapter Six of *Property Rights* not only makes it difficult for the reader to appreciate the complexity and the dialogic character of the debate over poverty in the eighteenth century, it is also unhelpful for an understanding of the politics of the period, which, presumably, is the point of making such a distinction. Consider the case of Jeremy Bentham who, on the issue of poverty, seems a likely candidate for inclusion in both chapters. On the one hand, Bentham denied that the poor have a right to poor relief, but, at the same time, he not only accepted that society has a responsibility to provide for the poor, but conceived of this responsibility as being exercised by the government on a very large scale. He drew up plans for Pauperland, as he called it, a system of panopticon ghettoes housing thousands of poor who, Bentham believed—contrary to all the evidence pertaining to eighteenth-century workhouses—could be put to work for profit.

Notwithstanding the constant surveillance, the breakup of families, enforced child labor, and the general condition of imprisonment of individuals within Bentham's workhouse, Horne provides a weak apologia for Bentham's plan for poor relief, which, he seems to feel, has been too harshly criticized by commentators on Bentham's thought. At least, Horne writes, Bentham supported the Poor Law at a time when many of his contemporaries were calling for its abolition,

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but Horne seems not to know how to weigh this fact against "the bizarre and repressive panopticon he suggested be used to administer it" (148–59).

According to Bentham, subsistence for all members of society is one of the specific objectives to be realized by the government in attaining the greatest happiness of the greatest number. Bentham used money as a shorthand measurement for happiness in this respect, and therefore, like David Hume, he recognized the relationship between the principle of utility and the redistribution of wealth. "The more nearly the actual proportion" of wealth "approaches to equality," Bentham declared, "the greater will be the total means of happiness" (152–53). However, like Hume, Bentham argued that any move toward greater equality in the distribution of wealth would undermine the security of the social system as whole, measured in terms of the expectations of present property holders. Bentham subscribed to this vague projection as to the consequential outcome of redistribution despite his insistence that, as a specific calculation of marginal utility, a dollar taken from a wealthy individual would produce less pain than the pleasure it would provide for a poor person if it were given to him (154–57).

Bentham's definition of "property rights" conflated "security for the labourer" with "security for the fruits of labour" (153). Horne's discussion of Bentham in *Property Rights and Poverty* is structured around the identification of security with the expectations of property owners which is then contrasted with the claims for equality with respect to the poor (153–59). Such a perspective loses sight of the significance of Locke's broad definition of "property" as including the rights—or, in Bentham's terms, the expectations—of every *person*.[38] As William Thompson observed, Bentham seemed oblivious to the expectations of millions of workers who, in money terms, could not draw any connection between their labor and their happiness. Nor, for that matter, given the laws and economic conditions of eighteenth-century Britain, could they see the connection between a general concept of security and the "property rights" they had in their labor (243). Bentham waxed enthusiastic about property as "the reward of my labor" in the context of an economic system where, as John Stuart Mill pointed out, the proposition was so chimerical as an empirical description of the relationship between labor and property ownership as to be not only a fiction, but, in Bentham's terminology, "a fiction on stilts." Bentham also spoke of property becoming, through our memories, a "part of ourselves," a far more metaphysical speculation than anything suggested by Locke in the *Two Treatises*. Yet, Horne is so defensively

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descriptive in his presentation of Bentham's ideas, that few of the theoretical tensions within Bentham's thought are critically examined. In *Property Rights and Poverty*, Bentham appears to be little more than a well-meaning, if confused, eccentric.

Similarly, when Edmund Burke counsels the poor that they should accept their lot, employing the by-then hackneyed reference to divine providence, it is exasperating, to say the least, that Horne displays so little critical acumen in assessing Burke's blatantly ideological use of religion (160–63). Burke never believed in the happiness of the people; it was neither a calculable nor a desirable political objective, as the utilitarians claimed. It certainly was not the role of government to provide for our subsistence, Burke declared. Burke claimed to be a follower of Adam Smith, but neither he nor Horne appear to have grasped the radical features of Smith's argument as it pertained to the condition of the poor, and so another opportunity to provide a critical analysis, this time of Burke's ideas, is missed by Horne, and the reader is left with mere reportage of what Burke said.

Adam Smith and the Laboring Poor

Although a number of important works on Adam Smith are listed in the bibliography to *Property Rights and Poverty*, they do not seem to have made much of an impression upon Horne, judging by the inadequate treatment accorded to Smith's ideas in the 11 pages Horne allots to him. Yet, as Gertrude Himmelfarb and other scholars have noted, Smith's *The Wealth of Nations* "was genuinely revolutionary in its view of poverty and in its attitude towards the poor."[39] This assessment is premised, in part, upon Smith's defense of high wages for "the laboring poor"—a term that Smith employs throughout his book—which formed part of his general attack upon the "utility of poverty" argument employed by the mercantilists. More important, certainly in terms of the development of late eighteenth-century and early nineteenth-century radical thought, was Smith's insistence that the dynamic expansion of a manufacturing economic system (my recognition of the lively debate amongst interpreters of Smith's thought as to his endorsement of "capitalism") would, in itself, resolve the problem of poverty. Such an expansive economic system, Smith insisted, would continuously raise the income and standard of living of the laboring poor, reducing the amount or perhaps even the necessity of assessing poor rates. Moreover, Smith argued that economic systems

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in general should be assessed as successes or failures in relation to precisely this accomplishment, namely, to the extent that they improve the condition of their poorest members. (NB: This is *not* a per capita income argument.)

It is not difficult to see (1) why Smith's conservative followers—Burke, Bentham, Malthus—rejected this "revolutionary" argument with respect to the poor and (2) why the misnamed "Ricardian Socialists" of the nineteenth century frequently appealed to Smith's authority as part of their critique of the achievements of nineteenth-century capitalism.[40] Smith's "confident assumption that the overwhelming number of the poor were in fact sober and industrious . . . permitted him to 'connect' the interests of the 'labouring poor' with the 'general interest' of society," and his belief that poverty could be viewed as a systemic defect of economic institutions shifted the entire debate over poverty onto a new terrain.[41] Thereafter, whether capitalism succeeded in meeting the needs of the poor provided a theoretical axis from which to assess the value of the economic system as a whole. It can hardly be surprising that the 26-year-old Marx should have copied into his 1844 Paris manuscripts Smith's famous declaration that "no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable."[42]

Yet it was Thomas Malthus's defense of just this social condition that, effectively, stood Adam Smith upon his head. Malthus acknowledged that the laws of political economy could account for increased economic productivity, but, he argued, the benefits of the latter would never be distributed in such a way as to substantially reduce the poverty of the masses. Malthus also attacked the claim of the poor to a right to relief, although, unlike many of his contemporaries, he implied that his rejection of such a claim was premised upon purely empirical grounds (167–68).[43] Yet since he, like all other political economists, conceded that the purpose of government was to act for the common good, it is difficult to determine what Malthus's objection could mean in the absence of a general assessment of all the resources available to society to meet the needs of the poor. Even if the economic system, left to itself, could not resolve the problem of poverty, as Adam Smith had assumed, this did not answer the question of why the responsibility for ending poverty was not part of the government's mandate to act for the public good. In other words, without a general standard defining what constituted the most effective use of *collective resources*—which writers such as Malthus refused to provide—on what basis could it be denied that society had every right to provide relief

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for the poor, *whatever the cost to taxpaying property owners*? Since, as one set of critics of the political economists noted, virtue could not be equated with the maximization of wealth in private hands, and since, as another set of critics argued, capital was a social resource to be employed for the benefit of society, the intellectual challenge to the conservative argument—once again passed over by Horne—was to find a defensible higher ground than simply an apologia offered on behalf of the preservation of the existing distribution of property ownership and political power in eighteenth-century society.

Radicalism, Democracy, and Market Society

That brings us to the radicals. When the radicals finally make their appearance in the last chapter of *Property Rights* as critics of the emerging capitalist society, it is as if they had suddenly sprung up like mushrooms in the night. Yet, virtually all of them accepted a Lockean interpretation of the natural law argument as an essential element of their social critique and their defense of poor relief. Moreover, many radicals cited passages from the *Second Treatise* in defense of democratic institutions as part of their attack upon the prevailing political system. Thus, (Lockean) arguments for political equality co-existed with and were sometimes combined with proposals to bring about greater economic equality in society.

Horne's discussion of the radicals is an illustration of his failure to see the forest for the trees. For, while he cites a sufficient number of passages from the writings of Thomas Paine, William Ogilvie, Thomas Spence, William Cobbett, and others to support these propositions, the reader gains little sense that, politically and intellectually, the radicals had, by the early nineteenth century, lost the battle with respect to poverty and the right to poor relief.[44] That is, while claims for political reform and an extension of democracy, viewed in relation to the structure of political debate in Britain from the 1770s to the 1840s, can be said to have maintained their central importance, with or without the support of Lockean ideas, during the same period, the argument for poor relief suffered disastrous defeats, culminating in the New Poor Law of 1834.

This is not the place to recount the events leading up to the passage of that Act. Suffice it to say that liberalism arrived at a historic crossroads in the early nineteenth century. If liberals chose to pursue the radical implications of moral egalitarianism—and many liberals, of

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course, chose not to do so—they could advance both a natural rights and a utilitarian argument for democracy, claiming, as the Levellers had, that property rights would remain secure notwithstanding such a political reform. If, on the other hand, liberals committed themselves to improving the condition of the poor, they either had to refute the Malthusian laws of political economy or abandon their commitment to market society in the form of nineteenth century capitalism. Robert Owen and other socialists followed the latter path, while most radical liberals in the nineteenth century focused their attention upon political reform, either at the expense of or, more often, as a necessary precondition for improving the condition of the poor in society.[45]

In the conclusion to *Property Rights and Poverty*, Horne prefers to see a rather effortless flow from early nineteenth-century liberalism to the welfare liberalism of T. H. Green and L. T. Hobhouse (255). He adopts this view because he is concerned to refute the proposition that liberalism supplies an absolute defense for exclusive individual property rights. And, viewed in relation to that perspective, there is a plausibility to the argument that social welfare liberalism is a more historically defensible characterization of the tradition of liberal political theory from the seventeenth century to the present than the libertarian interpretation of that tradition. Yet, I have suggested, such an approach pays insufficient attention to the internal tensions between a commitment to democracy and a commitment to market society as those tensions are expressed both within liberalism as a tradition of discourse and within the thought of individual thinkers who belong to that tradition. If the need to defend individual property rights has acted as a constraint upon liberalism's commitment to democracy, so the existence of mass poverty has threatened its commitment to market society. How those tensions are played out within liberalism, past and present, is, I believe, a far more important and interesting question than whether we ought to adhere to a mythical characterization of liberalism, *pace* Robert Nozick or C. B. Macpherson. It is not that I do not appreciate the service Horne has performed by exposing the absence of an historical foundation for either a possessive or an absolutist individualism as the theoretical framework for understanding property rights. I also recognize that an author has a privileged claim to write the book that s/he chooses to write which takes precedence over the book the critic wishes the author had written. Given his structuring premise, Horne has written a fine book, and I should very much regret it if the reader should conclude otherwise on the basis of some critical remarks in this essay. Indeed, it is precisely because there

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are so many worthwhile and important ideas contained in *Property Rights and Poverty* that it seems to me to be appropriate to offer the reader an alternative interpretive framework for assessing their significance with respect to the development of liberalism.

NOTES

1. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1967), *Second Treatise* sec. 135. See also secs. 6, 7, 159, 171, 183. (Cited hereafter as FT = *First Treatise* or ST = *Second Treatise*.) According to Locke, "the preservation of all mankind . . . [is] the true principle to regulate our religion, politics, and morality by." John Locke, *Some Thoughts Concerning Education*, in *The Educational Writings of John Locke*, ed. James L. Axtell (Cambridge: Cambridge University Press, 1968), article 116.
2. John Locke, *Essays on the Law of Nature*, ed. Wolfgang von Leyden (Oxford: Clarendon Press, 1954), 193, 195.
3. Locke, FT, sec. 42.
4. Locke, ST, sec. 107; see secs. 36, 45.
5. ST, secs. 26, 41, 49, 108.
6. Locke certainly believed that this proposition was applicable to seventeenth-century England, but I have phrased it more generally because there is no reason to think that any distinction between various societies, with respect to this issue, is more important than the one he draws in the *Second Treatise* between societies based upon the exchange of commodities for money and premonetary subsistence societies. As Locke put it in the memorandum he drafted on the revision of the Poor Laws, "everyone must have meat, drink, clothing, and firing. So much goes out of the stock of the kingdom, whether they work or no." H. R. Fox-Bourne, *The Life of John Locke*, 2 vols. (1876), vol. 2, 382.
7. "Municipal laws . . . are only so far right, as they are founded on the Law of Nature, by which they are to be regulated and interpreted." ST, sec. 12; see FT, sec. 92; ST, sec. 135.
8. Robert Filmer, *Observations on Mr. Hobbes's Leviathan*, in *Patriarcha and Other Political Works*, ed. Peter Laslett (Oxford: Blackwell, 1949), 242.
9. Thomas Hobbes, *Leviathan* (Baltimore: Penguin, 1968), 346.
10. James Tyrrell, *Patriarcha non Monarcha* (1681), 153; see 120.
11. ST, secs. 108, 110, 111.
12. ST, secs. 90, 94, 174.
13. Cited in Brian Manning, "The Levellers and Religion," in *Radical Religion in the English Revolution*, ed. J. F. McGregor and B. Reay (Oxford: Oxford University Press, 1984), 65–66.
14. Ibid., 69–73.

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15. For a further discussion of these points, see Richard Ashcraft, "Toleration and the Foundations of Democracy: Reflections on Western Political Thought," presented to the 15th World Congress of the International Political Science Association, Buenos Aires, Argentina, July 21–25, 1991; and "Radical Anticlericalism and 'Authority' in Lockean Political Thought," presented at the Le Moyne Forum on Religion and Literature, Le Moyne College, Syracuse, N.Y., September 26–28, 1991. For an elaboration upon the "manual occupations" of the individuals who formed the audience for whom the Levellers were writing, see John Wildman, *London's Liberties* (1651), 35.
16. ST, sec. 32.
17. FT, sec. 86.
18. For a discussion of this point, see Richard Ashcraft, *Locke's Two Treatises of Government* (London: Unwin Hyman, 1987), 47–50.
19. ST, secs. 182, 183.
20. ST, sec. 34.
21. ST, sec. 37.
22. Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton: Princeton University Press, 1986), 264–74.
23. C. B. Macpherson, *The Political Theory of Possessive Individualism* (London: Oxford University Press, 1962).
24. ST, secs. 36, 38.
25. For a critique of Macpherson on this point, see Richard Ashcraft, "The Politics of Locke's *Two Treatises of Government*," in *John Locke's Two Treatises of Government*, ed. Edward J. Harpham (Lawrence: University of Kansas Press, 1992), 14–49.
26. ST, secs. 31, 37, 46.
27. ST, secs. 36, 47, 48, 49, 50; Ashcraft (1987), 140–41.
28. ST, sec. 41; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 2 vols. (London: Methuen & Co., 1950), vol. 1, 14.
29. Ashcraft, *Revolutionary Politics*, ch. 6.
30. Anon., *An Inquiry into the Management of the Poor* (1767), 2; Anon., *An Enquiry into the Causes . . . of the Poor of England* (1738), 3; J. R. Poynter, *Society and Pauperism* (London: Routledge, 1969), 199, 262–63.
31. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1967), 41, 132. Horne discusses Price in the context of pointing out the latter's confusion in having combined a natural rights with a utilitarian argument; he makes no mention of Burgh.
32. Carla Hay, "The Making of a Radical: The Case of James Burgh," *Journal of British Studies* (1979): 96, 109–110. The passages from the *Second Treatise* Burgh is interpreting are sec. 142 (consent and taxes), and secs. 87, 123, 173 (broad definition of property).

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33. Josiah Tucker, *A Treatise Concerning Civil Government* (1781), iii, 26–27, 257, 358–59.
34. For example, see anon., *Justice to the Poor* (1820), 70.
35. Richard Woodward, *An Argument in Support of the Right of the Poor in . . . Ireland . . .* (1768), 24–25.
36. Anon., *An Enquiry into the Nature, Foundation, and Present State of Public Credit* (1747), 10–11.
37. Woodward, 24–29, 51.
38. Horne cites a passage from Bentham which, he claims, links the expectations of the poor with security for the rights of the person. But Bentham's statement deals with the calamities of flood, fire, famine, pestilence, etc., against which individuals should be "secure," indicating that it is not the expectations of the poor that matter to Bentham, but merely the avoidance of extreme consequences—death—which, if the government took no action to prevent, would, of course, obviate the meaning of security (157). It is from the latter standpoint, but not the former, that the repressive features of Bentham's panopticon appeared (to him) to be a justifiable response to poverty.
39. Gertrude Himmelfarb, *The Idea of Poverty* (New York: Vintage, 1983), 46; Istvan Hont and Michael Ignatieff, "Needs and Justice in the *Wealth of Nations*: An Introductory Essay," in idem, eds., *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1983), 1–44.
40. Noel W. Thompson, *The People's Science: The Popular Political Economy of Exploitation and Crisis, 1816–34* (Cambridge: Cambridge University Press, 1984). As Thompson emphasizes, nineteenth-century radicals cited Smith as an authority for their views more often and with better reason than they appealed to the ideas of David Ricardo.
41. Himmelfarb (62–63) emphasizes the first point, while Hont and Ignatieff (24–25) stress the second.
42. Smith, vol. 2, 80; Karl Marx, *Early Writings* (Harmondsworth, England: Penguin, 1975), 286.
43. Poynter, *Society and Pauperism*, 156–57, 171, 300–301. "The sole reason why I say the poor have no claim of *right* to support," Malthus wrote, "is the physical impossibility of relieving this progressive population [growth]." Cited in Samuel Hollander, "On Malthus' Population Principle and Social Reform," *History of Political Economy* (1986), 220.
44. For a discussion of this point, see Richard Ashcraft, "Lockean Ideas, Poverty, and the Development of Liberal Political Theory," in *Conceptions of Property in Eighteenth Century Britain*, ed. John Brewer and Susan Staves (London: Routledge, forthcoming).
45. For a cogent analysis of this division in radical thought, see Gregory Claeys, *Citizens and Saints: Politics and Anti-Politics in Early British Socialism* (Cambridge: Cambridge University Press, 1989).

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N. Scott Arnold

MARKET SOCIALISM

Can market socialism realize the socialist vision of the good society by ending exploitation and alienation, substantially reducing inequalities of wealth and income, ensuring full employment, and correcting other market irrationalities? A comparative analysis of the organizational forms of capitalism (notably the small owner-operated firm and the large corporation) and market socialism (the self-managed cooperative that rents its capital from the state) reveals the relative efficiencies of capitalism in reducing transaction costs, in turn reducing the opportunities for exploitation. By contrast, the transaction cost inefficiencies of the organizations of market socialism permit and encourage forms of exploitation that are precluded or discouraged under capitalism.

The rejection of communism in Eastern Europe and the Soviet Union has meant the repudiation of central planning as well as political dictatorship. But can there be socialism without central planning? Many socialists believe there can be. They think that some form of market socialism is a genuine alternative to central planning on the one hand and to capitalism on the other. What would a market socialist economic system look like? Could it realize socialist values and ideals?

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N. Scott Arnold, Department of Philosophy, University of Alabama at Birmingham, Birmingham, AL 35294-1260, telephone (205) 934-8920, telefax (205) 975-6639, the author of *Marx's Radical Critique of Capitalist Society* (Oxford, 1990), would like to thank the Hoover Institution at Stanford University and the Social Philosophy and Policy Center at Bowling Green State University for their support. Work on this project was partially funded by the Discretionary Grant Program, Department of State, Soviet-Eastern European Research & Training Act of 1983, Public Law 98-164, Title VIII, 97 Stat. 1047-50.

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Unless these questions can be satisfactorily answered, socialism cannot remain intellectually viable.

The purpose of this essay is to suggest that satisfactory answers will not be forthcoming. The first two sections sketch a widely shared picture of what a market socialist economic system would or should look like. The third section justifies this account by linking it to a vision of the good society that nearly all socialists would endorse. The final two sections argue that market socialism could not in fact realize that vision. The reason is that the favored organizational form in a market socialist economy—the worker cooperative—permits or encourages forms of exploitation that the organizations in a capitalist system preclude or minimize. In short, market socialism is more exploitative than capitalism.

What Is Socialism?

Let us begin by asking what one has to believe to be a socialist. It is a sign of the times that this question no longer has an obvious answer.

The case for socialism almost always begins with an extended critique of capitalism. Historically, the most important critic of capitalism has been Marx. Whatever disagreements contemporary socialists have with him, they seem to be broadly sympathetic to his views about what is wrong with the capitalist system.[1]

Marx's critique attributes two basic social evils to capitalism: exploitation and alienation.[2] The workers are exploited by those who control the means of production, and they and others are the victims of various manifestations of alienation. Marx further maintains that the elimination of these evils requires a fundamental change in capitalism. This is what makes his critique radical. Though contemporary socialists may not accept all the details of Marx's analyses, it is hard to find any who reject his claims that the capitalism is systematically exploitative and inherently alienating. This much is part of the common intellectual heritage of the Left.

Another common feature of both historical and contemporary socialist objections to capitalism is the critique of "social irrationalities," as they might be called, that are created by the blind and unregulated operation of the free market. These irrationalities include not only market imperfections such as negative externalities (e.g., pollution) and monopolies, but also mass cyclical unemployment and the evils of the consumerist mentality.[3]

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Finally, perhaps the most important element in contemporary socialist criticisms of capitalism is that this system is responsible for significant inequalities of material condition. The fantastic wealth of some is contrasted to the poverty, both relative and absolute, of others. Surprisingly, Marx had little to say about inequality as a systemic problem of capitalist society.[4] And although he condemned capitalism for the poverty it visited on the masses, he also seems to have viewed that poverty as a necessary accompaniment of the development of the forces of production.[5] By contrast, the relative and absolute poverty occasioned by inequality of material condition has been a major preoccupation of contemporary socialist thought.[6]

Criticisms of capitalism are, of course, not coterminous with criticisms of contemporary society. Feminists and animal rights activists, for example, have indicted the status quo for a variety of evils, but few of these critics believe that solutions would stem from changes in the economic system alone. What is distinctive about the socialist critique of contemporary society is that the capitalist economic system is judged to be the chief or only culprit. This fact permits some plausible inferences about the socialist conception of the good society. It is a society without exploitation and alienation, or at least one in which the magnitude of these social evils has been dramatically reduced. In addition, the social irrationalities caused by the operation of the free market will have been prevented or largely attenuated. Finally, inequality of material condition will have been significantly reduced. Although it may be that not everyone would receive the same income, wealth differentials would be dramatically reduced relative to what they are under the existing economic system, and absolute poverty would be eliminated.

These elements constitute what might be called a minimal socialist conception of the good society. Once we move beyond this conception, socialists disagree among themselves about what the good society would look like. Yet despite their differences, there seems to be considerable cognitive solidarity about the above-mentioned evils of the capitalist system, and by implication, about some of the virtues a socialist society would exhibit.

What economic system would produce these virtues? Socialists generally agree that such a system would have to prohibit private ownership of most of the means of production, since that is the essence of capitalism.[7] But what else does a socialist system involve? Socialists speak of social ownership, social control, or socialization of the means of production as the distinctive positive feature of a socialist economic

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system. It is usually explained that just as private property serves private interests under capitalism, socialized property serves the public interest under socialism. That is, control of the means of production is exercised in the interests of society at large or at least in the interests of the workers. To say that an economic system is socialist, then, is to say that generally speaking, the means of production are not privately owned and that ownership or control of same is social.

As a definition, this is accurate as far as it goes, but it leaves quite a bit undetermined. What is most sorely missing is a description of how social control is to be institutionally realized. How are the means of production to be controlled "in the public interest"? If socialism is to be presented as an alternative that reasonable people can be asked to embrace, it is necessary to describe the institutional form that social control of the means of production is supposed to take. In the twentieth century we have seen the results of the failure of nineteenth-century socialists to think this matter through.

State ownership has been the form that the overwhelming majority of actually existing socialist systems have taken. Why might state ownership be thought to embody social ownership or control? One reason is that many non-Marxists believe that the state (at least in its democratic incarnation) represents, albeit imperfectly, the public interest, that is, the interest of society at large. If the state owns the means of production, then almost by definition it manages them in the public interest.

Second, the common Marxist view is that the state always represents the interests of the ruling class; thus when the economic system is capitalist, the state—the bourgeois state—represents the interests of the bourgeoisie. When the revolution comes and the working class seizes state power, the proletarian state will manage the means of production in the interests of the working class. With the subsequent advent of a classless society, the means of production would be managed in the interests of society as a whole.

State ownership is not the only way of understanding social ownership or control. Indeed, these days it is much out of favor. Part of the reason for this is that state ownership has been identified with central planning, and no one believes in central planning any more. Moreover, state-owned firms in market economies are typically viewed as inefficient and overbearing. Though most people, and nearly all socialists, believe that the government should have a significant role in the economy, few now believe that it would be a good idea to turn

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over complete ownership of most of society's means of production to the state.

Hence the growing tendency to conceive of social ownership in terms of worker cooperatives, such as one finds in what used to be Yugoslavia or, on a smaller scale, in the Mondragon experiment in Spain.[8] In systems like these, the workers themselves control the means of production. That is, the firms are self-managed. Though self-management is theoretically consistent with central planning, those who favor cooperatives typically believe that markets should be used to coordinate production among firms; although the state should play an important role in directing the economy, prices are generally determined by the market and thus are not administratively imposed.[9] A second key feature of these cooperatives is that the profits of the firms are shared among all and only those who work in them.

Clearly, what is required of socialists is an empirical argument linking worker cooperatives (or any other form of socialism) to the various elements of a socialist conception of the good society, and a philosophical defense of the values and ideals that underlie their vision of the good society. Conversely, critics of socialism can either challenge these philosophical arguments (as Robert Nozick attempted in the critique of egalitarianism in *Anarchy, State, and Utopia*),[10] or they may seek to show that the type of economic system socialists favor would not in fact realize socialist ideals.

Until recently, critical arguments of the second type have been difficult to undertake due to the absence of detailed descriptions of what a socialist economic system would or should look like. Socialists have simply not been very forthcoming in outlining the type of economic system they favor. But this situation has changed in the past decade or so. Paradoxically, the collapse of "actually existing" socialist systems has been liberating for socialist thinkers. It has simultaneously removed a standing source of embarrassment and spurred serious thought about socialist alternatives to capitalism. In recent years, some economists and philosophers have made proposals for a market socialist economic system in enough detail to permit a reasoned evaluation of the claim that such a system could realize key elements of the socialist conception of the good society. In the next two sections, I shall outline the common features of many of these proposals. Then I shall briefly sketch the reasoning that leads from them to the elements of the socialist conception of the good society identified above. The type of system to be discussed here is not the only possible market socialist system, so this discussion makes no pretense of being com-

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prehensive. Nevertheless, it is a proposal that many socialists find attractive, for good reason. The last two sections critically evaluate this proposal.

Property Rights in a Market Socialist System

In the worker cooperatives favored as the predominant type of economic organization by most contemporary market socialists,[11] workers in each firm collectively determine the structure of work relations; the pay for different jobs, perhaps subject to state-imposed floors and ceilings; working conditions; and who will exercise day-to-day managerial tasks and what the scope of their responsibilities will be.

These firms would buy their nonlabor inputs and sell their output in the market—a market in which prices are free to seek their own level. The workers' aggregate income would consist of the total income of the firm minus nonlabor expenses; they would decide among themselves how the firm's net income would be divided up. These nonlabor expenses would include payments to suppliers, taxes, funds used to replace used-up or worn-out capital goods, and a capital usage fee paid to the state that would function like a rental payment on the proportion of society's capital that the cooperative controls. Workers could not sell these management and income rights to nonmembers of the cooperative, nor could nonmembers get management or income rights in any other way. In short, there would be no managers from outside of the firm's membership, nor would there be any outside equity owners. Moreover, all workers would have the status of members; in other words, there could be no wage laborers who would lack management rights.

The capital usage fee warrants a digression.[12] Firms can be thought of as borrowing all their capital from society at large. This would be institutionalized by payment of a capital usage fee to the state, which would stand in as a surrogate for society. This fee would be comparable to the interest paid to a lender of capital (e.g., a bondholder) in a capitalist system. The state, like the bondholder, would have no management rights or residual income rights in the firm, but the firm would be contractually obligated to pay the state a certain rate of return on its capital. In addition, the firm would be required to maintain (the value of) the capital it employs. This would require following prescribed maintenance procedures for plant and equipment and pay-

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ing into a depreciation (or capital reserve) fund to replace capital goods as they are worn out or used up.

The capital usage fee is designed to reflect the scarcity of capital, in the interest of economic efficiency. But why should the workers pay the fee to society at large (through the state) instead of paying it to themselves? In other words, why shouldn't the workers in the firms collectively receive the returns to capital, just as the owners of firms do in a capitalist system? There are two reasons. First, there are concerns about fairness. Because the capital-to-labor ratio would vary considerably among firms, workers in capital-intensive firms would realize a much greater per capita share of society's total return on capital investment than those who happen to work for less capital-intensive firms. It is not hard to see why this might be thought to be unfair, indeed even unjust. Second, a capital usage fee, together with the associated capital maintenance requirements, is a way of giving expression to the idea that society as a whole has an ownership stake in the means of production. Although that ownership is attenuated by the devolution of some of the most important incidents of ownership (notably, the right to manage and the right to the residuals) onto the membership of the firm, society as a whole, as represented by the state, retains a real ownership stake in its productive apparatus by receiving the returns to capital and by requiring (the value of) capital to be properly maintained.

The identification—or conflation—of the state and society as whole is, of course, potentially problematic. Most socialist theoreticians are aware of the fact that the state can develop an unhealthy autonomy from society, which is why many of them do not favor concentrating all economic power in the hands of the state; many also favor various separation-of-power schemes within the part of the state that manages the economy. However, nearly all socialists strongly favor a highly democratic, participatory state, which thereby has a legitimate claim to reflect the public interest.[13]

Another aspect of social ownership of the means of production is state control of the rate and direction of economic growth. Nearly all market socialists advocate a substantial role for the state in directing the economy.[14] Though they usually envision firms financing some expansion and even some new projects from undistributed earnings, they also believe that the state should control most new investment by one institutional mechanism or another.[15] For example, banks might be state owned, and their boards of directors popularly elected.

The most obvious way for the state to finance new investment is

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through the capital usage fee. The level of that fee, that is, the rate of return on society's investment, should be a matter of social choice, since this decision would effectively determine society's rate of economic growth. In this way, the overall level of investment would be a matter of conscious choice rather than something that just happens, as under capitalism.

As should be evident, there is no simple answer to the question of who owns the means of production in this type of system. Workers in the cooperatives have some of the incidents of ownership, such as management rights and some income rights. But the state also has income rights in the firm (or, more exactly, in the firm's capital) through the capital usage fee. Moreover, the state can and would restrict what the workers could do with the means of production they control. Presumably, cooperatives would be required to maintain the value of "their" capital by properly maintaining plant and equipment and by setting aside funds to replace capital goods as they are used up. The analogous situation in a free-enterprise system would be that of a firm renting a particular machine from another firm or borrowing working capital from a financial institution. Not only must the lending entity receive a return on its investment, but the rental fee or periodic payment must also cover the value of the portion of the capital that is used up (which, in the case of finance capital, would be the principal).

What Does Market Socialism Accomplish?

Why favor a system like the one just described? The justifications for each of the elements of the market socialist economic system just sketched are to be found in the perceived defects of capitalism and, by implication, in the minimal socialist conception of the good society outlined above. To recall, the social evils attributed to capitalism include: 1) significant inequality of material condition, 2) considerable absolute and relative poverty, 3) various "social irrationalities" produced by the unhampered operation of the market, 4) alienation, and 5) exploitation. Let us consider how each of these is supposed to be avoided by market socialism. In this way, we can fill in the details of the argument linking a market socialist economic system to the socialist conception of the good society.

1. *Inequality of material condition.* Relative equality of material condition is part of most contemporary socialists' conception of the good

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society.[16] How are inequalities of material condition to be held within a tolerable range (however "tolerable" is defined) in the market socialist community? One source of inequality under capitalism is the fact that different individuals own, and thus receive the returns on, widely different quantities of capital. This source of inequality would not exist under market socialism because all the returns to capital would be paid to society at large through its surrogate, the state.

Second, it is envisioned that the net income of each firm would be divided up relatively equally among the membership. As Saul Estrin has written,

> The distribution of income between people of different skills within each enterprise becomes a matter for internal debate and vote under self-management. . . . While the outcome will still reflect to some extent the market position of those with special skills, it is likely to be more egalitarian than pertains in capitalist firms. In particular, it seems unlikely that the very high salaries and other perks accorded to themselves by top managers would survive open scrutiny and democratic vote by other employees.[17]

While Estrin and other socialists envision a democratically determined division of the firm's income, it is not necessary that each worker receive the same income. It may well happen that those with especially valuable skills or abilities would receive more because of their recognized value to the firm. But, for the reasons cited by Estrin, the range of inequality in incomes would likely be much reduced relative to what one finds under capitalism.

Third, the linkage of management and income would preclude the existence of second-class workers—proletarians, if you like—who would not be entitled to a share in the firm's net income and whose productive lives would be controlled by others. No genuinely socialist society can tolerate that phenomenon except at insignificant levels.

There is one final source of inequality in income that has to be taken into consideration. In any market economy, some firms will be more successful than others, which means that there will be interfirm variations in income. Market socialists cannot oppose inequalities that arise in this manner, at least up to a point. After all, the possibility of making a larger income is supposed to be an incentive for cooperatives to produce efficiently—an incentive that would be missing under more aggressively egalitarian forms of socialism. On the other hand, no socialist society can remain indifferent to income inequalities that fall outside a certain range. One obvious way to deal with such differentials would be for the state to levy a progressive income tax on

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individuals or firms, with the steepness of the progressivity of this tax determined by whatever range of income inequality is deemed to be socially acceptable.[18]

2. *Poverty.* What relieves absolute and relative poverty in this type of system? Presumably the egalitarian structure of income rights is part of the story, but this will be decisive only if everyone is gainfully employed. Full employment in a market socialist system is supposed to be ensured by state control of new investment, which has full employment and smoothing out the business cycle as two of its main goals. As David Schweickart writes,

> Governmental control here does give, in an important sense, control over the whole economy. That is precisely what we want. We want political control over investment to head off the anarchy of the market, to subject the growth of the economy to human direction, to eliminate the boom-bust cycles of capitalism. The appeal here is to efficiency, material well-being and autonomy.[19]

A market socialist system can also avail itself of more traditional monetary and fiscal instruments to assist in the task of ensuring full employment. And it can utilize standard welfare-state measures to relieve absolute poverty. A truly democratic state in a society which does not have a great deal of wealth tied up in private holdings would presumably have both the means and the will to prevent the neglect of the poor that socialists believe has characterized the capitalist welfare state.

3. *"Social irrationalities."* Despite their appreciation of the virtues of markets, market socialists are quick to point out the vices of the market as it functions under capitalism. Along with the unemployment associated with the business cycle, commonly cited defects and problems of the market include positive and negative externalities, monopolistic and oligopolistic pricing, inequalities of influence on the structure of production caused by the unequal distribution of income (i.e., some people having more "dollar votes" than others), and special problems in the capital markets.[20] To refuse to interfere with the "free" market, as capitalism does, is to place procedures above outcomes. According to market socialists, this means accepting the social irrationalities that emerge from the blind operation of market forces.

This commitment to procedures at the expense of outcomes would not characterize a market socialist community.[21] Market irrationalities can and should be corrected by state intervention. For example, it may happen for some exogenous reason (e.g., historical circumstance) that

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there is not enough low-cost housing or decent medical care in a certain geographical area. Or perhaps there are too many luxury goods being produced, given that more urgent needs are unmet. To correct these imbalances thrown forth by the market, there has to be—and for the market socialist there is—an ultimate recourse available to society. That ultimate recourse is the state. The state can correct such imbalances by providing goods or services to those who need them, either free or at subsidized prices; it can tax companies that make windfall profits or impose selective price controls on them; it can prohibit pollution; and it can use its control of new investment or interest rates or tax policy to nudge the market in the right direction.

Although all of these things are done by capitalist states, they are often done in a half-hearted way and only after the problems have become egregious. Socialists argue that the main reason for the state's lackluster performance in these areas is that capitalist society has a strong ideological and legal commitment to respect for private property rights and, in consequence, to the irrational outcomes that issue from the blind operation of the market.

By contrast, though there is some presumption in favor of the market in a market socialist system, there is no principled opposition to bypassing it when some social irrationality demands it. Indeed, there is a principled commitment to bypassing the market whenever the situation demands it. This commitment does not entail that market socialists believe that the state will be infallible in discerning or dealing with social irrationalities. But they are ready and eager to use the state to deal with the various failures of the market, in contrast to the reluctance to do so that characterizes defenders of capitalism. The verdict of the market is not sacrosanct and should be subject to appeal, institutionalized by the substantial and explicit involvement of the state in the economy.

4. Alienation. According to Marx, one type of alienation that is endemic to capitalist society is the alienation of the worker from his or her labor. This form of alienation most prominently manifests itself in worker dissatisfaction with and on the job. In Estrin's words,

> Workers have no say in the major decisions affecting their working lives: the production processes used, the pace of manufacture, the noise levels, manning arrangements, the layout of the plant, the decision to increase or reduce the labour force or even to close the factory. Their dissatisfaction comes out in a number of ways: their attitude toward work, . . . to management in general, and to the owners is often highly negative—the 'them versus us' mentality. If the labour force is not unionized, this often leads to uncoopera-

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> tive attitudes, inflexibility with regard to work practices, high rates of absenteeism, shirking, and labour turnover. If it is unionized, [it leads to] unions' militancy, industrial action, and strikes.[22]

These manifestations of alienation are explained by the fact that management rights and income rights (rights to the profits) are not held by the workers themselves. The residual claimants and their agents, who exercise direct control of the means of production, drive the workers as hard as they can in seeking to maximize profits. They only show concern for what the workers think and want to the extent that maintaining profits demands it.

By contrast, worker self-management entails that important workplace decisions will be made via participatory and democratic procedures. Though workers may delegate some day-to-day managerial tasks to specialists, they cannot delegate too much decisionmaking authority without losing control of their productive lives.

Moreover, since the workers have income rights as well as management rights in the firm, it will be up to them to decide what tradeoffs between income and other values are acceptable. Suppose there is a drop in demand for the products a firm produces. Under market socialism, workers may respond by collectively deciding to take a pay cut, to work longer hours, to reorganize production in less intrinsically satisfying but more productively efficient ways, to defer new investment, or some combination of these options. Capitalist firms have all these options as well, but those most directly affected—the workers—do not decide which of these strategies will be adopted. Instead, such decisions are made by others, namely, the bosses. Finally, because of their income rights in the firm, socialist workers would have a bigger stake in the firm's health and survival. This would eliminate, or at least significantly dampen, the "them-versus-us" mentality noted by Estrin.

An unalienated work force is clearly part of the socialist conception of the good society. Job redesign would ensure more meaningful work, or at least the workers would have consciously and deliberately chosen the greater income that goes with more alienating labor. Consequently, strikes, absenteeism, shirking, and job turnover would be minimized. Estrin and others who favor market socialism do not explicitly promise that workers' control over their productive lives, ensured by the management and income rights they hold in the firm, would totally eliminate all of these problems. Some of them may never

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go away entirely. But they do hold out prospects for significantly ameliorating these manifestations of alienation.

5. *Exploitation.* Historically, the most important claim for the systematic exploitation of workers by those who control the means of production occurs in volume 1 of Marx's *Capital.* Contemporary socialists have tried to reformulate Marx's argument for this claim to avoid its notorious difficulties.[23] According to Marx's labor theory of value, the worker is responsible for all of the value added at any given stage of production. By implication, the capitalist, in his role as capitalist, is responsible for none of that value. But because capitalists own all the means of production, the worker is effectively forced to hand over some of the added value in the form of profits. Serious problems with the labor theory of value are now acknowledged.[24] Suppose for a moment, however, that Marx's account of exploitation under capitalism is correct. In what exactly does the exploitation consist?

Part of the answer seems to be a lack of reciprocity in the relationship between the capitalist and the worker. Reciprocity requires that one return "good for good," proportionately.[25] In a joint undertaking, this means that the benefits each person receives must be proportional to the value of that person's contribution. In a commercial venture, where benefits and contribution are conceived of in economic terms, this means that the value each person realizes must be proportional to the value of that person's contribution.

In Marx's account, the capitalist, in his role as capitalist, contributes no value at all. He simply buys labor power, sets it to work on the means of production that he owns, and reaps the profits. It is true that the means of production that the capitalist provides are used up in the process of production. Some of the value received when the product is sold goes to replace that. But the capitalist gets something over and above that replacement value—a positive return on his investment. Thus, according to Marx, the capitalist gets something for nothing. This constitutes a massive and systemic failure of reciprocity, which is explained by the fact that the worker has no choice but to sell his labor power to the capitalist (or, more exactly, to some capitalist or other).

Contemporary socialists have tried to argue, without presupposing the labor theory of value, that the existence of interest income (the "normal" return on investment) that goes to the capitalist—a nonworker—simply by virtue of his ownership of the means of production is inherently unreciprocal. A number of writers have maintained that this interest income alone indicates that the worker is working more hours than it takes for her to earn the goods she buys with her

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wage, and that this is what constitutes the failure of reciprocity.[26] Others have tried to establish a failure of reciprocity without making this supposition.[27]

Most of those sympathetic to Marx's conclusion have also maintained that under capitalism the workers are forced to work for the capitalists. Although there has been some dispute about how to understand this "forcing condition,"[28] there seems to be agreement at least on the proposition that, for the vast majority of workers, there is no feasible alternative to participation in the capitalist system. This fact, however it is described, coupled with the failure of reciprocity, is what makes the workers exploited under capitalism. A failure of reciprocity coupled with some sort of forcing is not the only way to understand the concept of exploitation, but variations on these themes are dominant in contemporary socialist writings on exploitation.[29]

Given this account of exploitation, it is easy to see why socialists believe that exploitation would be abolished in the market socialist community. If only workers have income rights in their firms, no class of nonworkers can make claims on the income stream of the firm. The capital usage fee, which corresponds to the capitalist's return on his or her investment, would be paid to the state to finance new investment so that society as a whole gets the returns to capital. It might be objected that this represents an intergenerational transfer of wealth, since the contribution to well-being made by new investment is realized in the future. However, the defender of market socialism could respond by pointing to the capital accumulation of previous generations that has benefited the present generation. The upshot may be an argument for not dramatically increasing the rate of capital accumulation. And since firms would be self-managed, workers would not be forced to deal with others who control the means of production. As members of the cooperative, they are full partners in the firm.

Exploitation and the New Economics of Organizations

In the discussion of exploitation in the preceding section, it was suggested that exploitation involves a failure of reciprocity between the exploiter and the exploited. Call this the "failure of reciprocity condition." When someone is exploited, this condition is met when and because the exploited party effectively has nowhere else to go. Call this the "no real alternative condition." These two conditions are singly necessary and jointly sufficient conditions for exploitation. Is there

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a way to understand how these conditions might apply in a market economy that does not depend on some of the more dubious elements of Marxian economic theory? I believe there is. Since the costs and benefits of market exchanges are primarily economic, the most obvious way to understand the failure of reciprocity condition is in terms of one party to the exchange not getting the market value of what he or she gives up in that exchange.

For example, if I have no real alternative but to sell my labor to you for less than its market value, then I am being exploited by you. Or suppose farmers in a given country grow a certain cash crop which they then sell on the world market. The government finally gets around to "organizing and rationalizing" the economy and sets up a marketing board through which all farmers must sell their crops. Suppose that the marketing board pays the farmers well below the world market price and forbids farmers from selling their crop directly on the world market. Under these circumstances, the farmers are being exploited by the state. They are getting less than the market value of what they are selling, so the failure of reciprocity condition is met. And, since they are forced to sell through the marketing board, the no real alternative condition is also met.

In these examples, failure of reciprocity means getting less than the market value of what one is selling. "Market value" is what one would get in a reasonably competitive market. In an exchange in such a market, it is appropriate to say that the buyer got his or her money's worth and that the seller got a price that reflects the true value of the item he or she sold.

The notion of a reasonably competitive market should not be confused with the neoclassical economist's conception of a perfectly competitive market. In a reasonably competitive market, there is brisk competition among both buyers and sellers, whether or not all participants are price-takers or all parties possess perfect information, as in the case of perfectly competitive markets. Examples of reasonably competitive markets include many world commodity markets, wholesale produce markets in major metropolitan areas, and restaurants in most locales. On the other hand, examples of American markets which are not reasonably competitive are markets in long distance telephone service and in airline service prior to deregulation, the current market for cable television in most areas, and the market for delivery of First Class mail. In all these markets, consumers pay more than they would if the market were reasonably competitive. Not coincidentally, in all of these markets they had or have nowhere else to go.

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This way of conceiving of exploitation ties exploitation to how well markets actually function, that is, to how efficient markets are. If a given market is functioning well, then buyers and sellers are getting the value of what they bring to the exchange and neither party is being exploited. On the other hand, if for whatever reason some market is not functioning efficiently and one party effectively has no where else to go, then an opportunity for exploitation would appear.

Whether or not markets in a market socialist system would be reasonably competitive is an empirical question that is peculiarly difficult to address: market socialism, as defined above, has never existed anywhere in the world. To be sure, there are cooperatives in modern economies such as those found near the town of Mondragon in the Basque region of Spain, and the plywood cooperatives in the Pacific Northwest. But unlike market socialism, both of these cooperatives exist in a capitalist milieu, and in neither case does the state own the capital they employ.

The economic system of what used to be Yugoslavia is closer to market socialism, since it was a market economy in which firms had a form of self-management and the state effectively owned the firms' capital. There are nonetheless a number of important differences. One is that the political system of Yugoslavia was not democratic but was dominated by the Communist party. Market socialists are not Communists (with all of the ideological baggage that entails), and they favor competitive, pluralistic democracy. Another important difference is that in the former Yugoslavia, the state intervened massively and capriciously in the economy in ways that proponents of market socialism do not advocate. The main problem was that the state did not allow the market to impose discipline on the cooperatives.[30] New investment was routinely used to bail out firms that would otherwise fail, the legal definition of residuals was continually revised, and prices and foreign exchange rates were often administratively imposed for purely political reasons. Indeed, the whole economic system was subject to constant revision in fairly fundamental ways over a 40-year period.

Fortunately, theoretical work on the economics of organizations can be brought to bear in evaluating the empirical prospects of market socialism.[31] Indeed, because the difference between market socialism and capitalism is precisely in the organizational forms that predominate, this work can be used to shed some light on the potential for exploitation in both types of systems.

Historically, neoclassical economics treated the firm as a production

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function that transforms inputs into outputs. As such, the firm was a kind of black box whose internal workings were ignored by the economic theorist. In an important article published in 1937, Ronald Coase challenged this view.[32] Coase maintained that one could not adequately understand a market economy without understanding the internal structure—the organizational structure—of the firm. The central question of Coase's article has an almost philosophical ring to it: "Why are there any firms at all?" Implicit in this question is a contrast between the firm and the market as alternative ways of coordinating economic activity. Why isn't all economic activity organized on the principle of buying and selling private property? Within firms, common property is the rule. Why isn't each machine in a production process owned by an individual who sells his or her product to the next person on the production line? Why, for that matter, was the putting-out system of the early English Industrial Revolution replaced by the factory system?

Coase's answer to this general question is not particularly surprising. The hierarchical relation characteristic of the firm is sometimes more efficient than repeatedly having to find, negotiate, and reach agreement with various owners of factors of production at each and every stage of the production process. These transaction costs are avoided when an individual simply hires factors of production (e.g., labor, capital goods) which are then subject to his direction.

Armen Alchian's "Uncertainty, Evolution, and Economic Theory"[33] put Coase's insight into an evolutionary framework. Alchian starts with the observation that there is a competitive struggle for survival among firms. There are differences among firms in their internal organization, policies, procedures, and so on. Some of these differences are conducive to the firm's survival, and some are not. Those with the more efficient organizational forms, policies, and procedures will make positive profits (the criterion for success) and survive, while those with maladaptive features will not.

Over time, firms evolve to become better adapted to their economic environment. The parallels with Darwinian evolution are striking. But what corresponds in this system to heredity and mutation? Alchian's answer: imitation and innovation. Successful firms keep doing what they have been doing (they "imitate" themselves), and other firms adapt by imitating their more successful rivals. As Alchian explains it, "what would otherwise appear to be merely customary 'orthodox,' non-rational rules of behavior turn out to be codified imitations of observed success, e.g., 'conventional' markup, price 'followship,'

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'orthodox' accounting and operating ratios, 'proper' advertising policy, etc."[34]

In other words, the policies, procedures, and even organizational forms of business firms can be given an evolutionary explanation by reference to the market test of relative efficiency. If an organizational form, policy, or procedure is common and has persisted for an extended period of time, then there is probably some efficiency advantage to it.

Suppose that Coase's general explanation of the firm-market boundary and Alchian's general evolutionary hypothesis are roughly correct. Since an organization can be thought of as a nexus of contracts (repeated exchanges) among the individuals who make it up, there should be transaction-cost efficiencies associated with the organizational forms found under capitalism that are not present in market socialist cooperatives. Given the conceptual connection between inefficiency and exploitation established at the beginning of this section, a market socialist system may therefore be responsible for forms of exploitation that do not arise, or at least are discouraged, under capitalism.

Under capitalism, two organizational forms predominate: the large corporation, in which management is separated from equity ownership and ownership shares are freely traded on securities markets (sometimes called "the open corporation"), and the owner-operated firm (sometimes called "the classical capitalist firm").[35] The next sections identify the transaction-cost efficiencies of the classical capitalist firm and the open corporation and explain how these organizational forms prevent forms of exploitation that cooperatives encourage or permit.

Opportunism and Socialism

The transaction-cost efficiencies of the classical capitalist firm were first systematically investigated in a 1972 article by Alchian and Harold Demsetz, "Production, Information Costs and Economic Organization."[36] According to Alchian and Demsetz, what is distinctive about the classical capitalist firm is team production with a centralized contracting agent who is also the residual claimant. Team production involves several types of inputs, the product of which is not the sum of separable outputs of each cooperating resource. The central contracting agent purchases or hires all the factors of production, and the

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residual claimant is the one who gets what is left over after all the input providers have been paid.

Alchian and Demsetz's explanation for the structure of the classical capitalist firm starts with the observation that "the economic organization through which input owners cooperate will make better use of their comparative advantages to the extent that it facilitates the payment of rewards in accord with productivity."[37] The evolutionary subtext to this is that if rewards were negatively correlated with productive contribution or if there were no correlation between reward and productive contribution, the organization would not survive in competition with organizations that positively correlated reward to productivity. So whatever organizations exist under capitalism must achieve a positive correlation between reward and productive contribution.

Achieving this correlation is often no easy matter, especially in the case of team production where individual output is costly to gauge. Team production can greatly increase total productivity, but at the cost of making individual contributions hard to ascertain. This creates an incentive for individual team members to shirk, that is, to reduce their input. This can be modeled as a prisoners' dilemma or public goods problem. Each individual might prefer that no one shirks, yet each has an incentive to do so. Because shirking is hard to detect, anyone who shirks gets all the benefits while suffering only a fraction of the costs in the form of reduced team output.[38] If everyone reasons like this, everyone will choose to shirk. Output will fall, and the benefits of team production will be dissipated.

"Shirking," the term Alchian and Demsetz use, has misleading connotations: it suggests that the inputs in question are limited to labor and that shirking consists in avoiding labor by putting forth less than average, or less than expected, physical or mental effort. Both connotations are too narrow, however. A more accurate term might be "opportunism," which Oliver Williamson defines as "self-interest seeking with guile."[39] The inputs that can be reduced by opportunism are not limited to labor. Regular suppliers of any input may act opportunistically. For example, providers of raw materials and semifinished products may shortweight deliveries or provide goods of substandard quality; laborers may act opportunistically not only by engaging in various forms of shirking (e.g., hiding out in the restroom and taking longer breaks) but also by beating up on equipment to make the job go easier, working carelessly, pursuing office politics instead of production, engaging in activities unrelated or only marginally related to the

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task at hand, or taking home office supplies. The incentive for workers to engage in these and other forms of opportunism comes from the simple fact that people can usually think of something better to do with their time, from the point of view of their own values and interests, than what they are being paid to do. This is true even if, from a broader perspective, they prefer being gainfully employed to being unemployed.

An obvious solution to the general problem of opportunism in team production is for one member of the team to specialize in monitoring other input providers, including workers. What does the monitor do? Perhaps what comes most readily to mind is metering inputs and administering discipline. But there is more to it than that. Monitoring also includes designing or redesigning tasks, formulating criteria for evaluation, and simply giving instructions and orders.[40] But who monitors the monitor? Doesn't the problem recur at the next level? Alchian and Demsetz maintain that this problem is solved most efficiently by making the monitor the central contracting agent and the residual claimant. The central contracting agent is in charge of negotiating contracts with all input providers. Obviously, the monitor is in the best position to negotiate these contracts. Moreover, as residual claimant, he or she gets what is left over after all other input providers have been paid. By closing the gap between principal and agent, this system gives the person who serves as monitor, central contracting agent, and residual claimant (call this individual "the boss") a strong incentive to pay the owners of other inputs, e.g., workers, as close to their marginal value as possible. If they are paid less than their marginal value, competitors will be able to hire these input providers away for more than they are being paid. On the other hand, if they are paid more than their marginal value, then the residual claimant ends up with less for himself or herself.

The boss is not limited to observing and metering inputs in order to prevent opportunism by input providers. He or she can also redesign the production process so that individual contributions are more easily metered—or less in need of metering because they are intrinsically more rewarding. And the boss may discipline or fire input providers who cannot resist the temptation to act opportunistically or who cannot perform at a market-determined level of proficiency. Finally, if the boss is to pay due regard to the medium and long-term wealth consequences of his or her decisions as monitor and central contracting agent, he or she has to be able to sell all the rights associated with these roles, as well as the right of residual claimancy.[41]

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There are two features of the classical capitalist firm this story does not explain: (1) why the boss chooses the firm's product, characteristics, and price, that is, why the boss is the firm's entrepreneur, and (2) why the boss is the primary provider of capital. Yoram Barzel has endeavored to explain both of these.[42] The basic explanation is the same as that advanced by Alchian and Demsetz: High monitoring costs make it most efficient for the entrepreneur and the primary provider of capital goods to be the residual claimant. The entrepreneur decides what is to be produced, in what quantity, and at what price it is to be sold. It is quite difficult to evaluate the performance of (i.e., to monitor) these tasks. Part of the problem is that success in any of these endeavors can be profoundly influenced by luck, and it is difficult to separate what is due to luck from what is due to skillful productive effort. When the entrepreneur's tasks are assigned to the residual claimant, the entrepreneur must bear the total wealth consequences of his decisions. This gives him more of an incentive to exercise good judgment than would be present if he lacked residual claimant status and his compensation depended on the judgment of a monitor.

In the classical capitalist firm, the boss-entrepreneur is also the primary provider of capital. That is, he owns most of the firm's capital. Barzel's explanation for this focuses on entrepreneurial decisions about which venture(s) to pursue. It is hard to monitor the investigation and assessment of possible ventures (including the decision to stay in the business one is in). This means that the risks of any venture are not independent of the entrepreneur's actions. If the latter is diligent in investigating and assessing opportunities for the firm, the risks go down; otherwise, they increase.

If entrepreneurs operate entirely with capital owned by others, then they would have an incentive to pursue higher risk, higher payoff ventures than they otherwise would. These risks are further enhanced if they are the sole residual claimants, and if the providers of capital have the status of bondholders to whom a fixed rate of return is promised. The reason is that the entrepreneurs would get the positive profits if their ventures pay off, but if they fail, those who lose out would be either unsecured creditors or the providers of capital, if that capital secured the firm's debts. In contrast, if the entrepreneur puts up a substantial portion of the capital herself, she is in effect providing a bond to other input providers that she will act diligently in investigating and assessing possible ventures, as well as in her monitoring tasks and in other dealings across the firm-market interface. In short, if the entrepreneur provides the capital, she has a lot to lose. This bonding

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arrangement has the same consequences on her performance as good monitoring would.[43]

The superior incentive alignments of the classical capitalist firm economize on transaction costs. The associated efficiencies reduce the likelihood that team members will exploit one another by appropriating some of the value of what others have to contribute. Specifically, the likelihood that input providers, including laborers, can exploit the central contracting agent is reduced by the fact that the monitor, as residual claimant, has a powerful incentive to minimize shirking and other forms of opportunism. Moreover, the monitor cannot exploit others by slacking off in her job as monitor because she is the residual claimant and thus earns no market-determined wage.

Let us now consider the very different organizational structure that characterizes the worker cooperative. It might seem that the cooperative would not face the problem of opportunistic workers because, unlike in the classical capitalist firm, the workers are the residual claimants. But that is not quite right. Production is still team production, which means that individual contributions are hard to ascertain. The opportunistic worker still gets all of the benefits, and suffers only a fraction of the costs, of his opportunism. In very small organizations, this fact may not matter; the consequences of any member's opportunism may be significant enough for that member or for each and every other member that it is discouraged by self-interest. Either no monitor would be needed, or perhaps everyone could do the small amount of monitoring that is necessary. In very small classical capitalist firms, usually the boss is also a worker and does the monitoring in conjunction with her other work. So, there may be nothing to choose between these two types of organizations in terms of vulnerability to exploitation by shirking workers.

On the other hand, cooperatives with more than a few members are likely to need full-time monitors. But monitoring is likely to be significantly less effective in cooperatives of this size than in the classical capitalist firm for at least three reasons. First, since those being monitored will choose their supervisor, political rather than monitoring skills are likely to be the main criterion of election. Those political skills need not be positively correlated with, and indeed may be negatively correlated with, what is required to be a good monitor. Workers may well be inclined to vote for those who appear to promise to go easy on them individually (or on their subgroup) and to go hard on everyone else. Convincing people of this sort of thing is the consummate accomplishment of successful politicians in a democracy.

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Second, to the extent that opportunism cannot be prevented by redesigning tasks to make them more agreeable, the successful monitor must create a climate in which opportunism is not tolerated. It is hard to see how this could be done without creating a relationship between the monitor and the workers which is to some extent adversarial. Such a relationship would be difficult to sustain in a context in which the monitor is elected by the workers. It will be difficult for the monitor to put the fear of God in the workers if the workers get to elect God. In the classical capitalist firm, on the other hand, getting and keeping the job of monitor does not depend on the good will of those who are being monitored, except inasmuch as good will contributes to the firm's competitive success. There is some reason to believe, therefore, that worker cooperatives would in general be less effective at ferreting out and getting rid of opportunistic workers, who are exploiting their fellow workers, than are their counterparts in the classical capitalist firm.

Third, the monitor in the cooperative has only fractional residual claimant status, whereas the monitor in the classical capitalist firm is the full residual claimant.[44] This would seem to give the former a weaker incentive to do a good job of monitoring, since the costs of others' opportunism would be spread among all the members of the cooperative rather than falling entirely on the monitor-residual claimant's shoulders. Fractional residual claimant status in a cooperative of, say, 25 to 100 workers would seem to provide a decidedly weaker incentive for the monitor to avoid shirking in the provision of monitoring services than the full residual claimant status of the monitor in the classical capitalist firm. These motivational weaknesses are further aggravated by the fact that monitoring is itself difficult to monitor. This is a problem because, for most people, the monitor's tasks of metering inputs, apportioning rewards, and administering discipline are intrinsically disagreeable—especially for those with the political skills to be elected monitor.

As suggested earlier, these differences between the classical capitalist firm and the worker cooperative may be more theoretical than practical in a very small cooperative. However, once a cooperative's membership reaches a certain size, the problems alluded to above will likely appear. In these small to medium-sized cooperatives, which are comparable in size to most classical capitalist firms, monitoring might well be fairly ineffective, and the level of shirking by other workers would be correspondingly greater than in counterpart capitalist firms.

It might be objected that the empirical evidence does not support

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these theoretical speculations. Bradley and Gelb have found that in the cooperatives of Mondragon (where managers are elected by the workers), monitoring by management is in point of fact quite effective and that there is even some horizontal monitoring by fellow workers.[45] This might be explained by the fact that electing monitors may give them a legitimacy their capitalist counterparts lack, diminishing shirking and other forms of opportunism by nonsupervisory personnel.

The evidence for this line of argument is ambiguous, however. The basic problem is that other factors may be responsible for the low incidence of shirking in the Mondragon firms. For example, these firms compete with capitalist organizations and so must be effectively monitored or in need of little monitoring if they are to survive. Second, there may be selection biases that draw relatively nonopportunistic managers and workers to the Mondragon cooperatives and repel more opportunistic prospective workers and managers.[46] Finally, the fact that the Mondragon workers have something approaching equity ownership in their cooperatives may be an important factor in accounting for the low incidence of shirking.[47] None of these factors would operate in a market socialist system.

Another response is available to the market socialist. It might be objected that the other benefits of working in a cooperative (such as reduced alienation) would outweigh the problem of opportunism and its associated exploitation. Indeed, that may well be the case. One way to find out, of course, would be to allow other types of organizations to exist. If employment in alternative types of organizations (e.g., capitalist organizations) were readily available, then the "no real alternative" condition for exploitation would not be met and the nonshirking workers would not be exploited. Presumably, the nonmonetary benefits would explain why the latter would choose to stay in spite of the shirking by their fellow workers. The problem with this scenario is that a system that permits a wide variety of organizational forms cannot be market socialist, since one of market socialism's distinguishing features is that it mandates by law a particular organizational form, something that capitalism does not do.

There may well be other distinctive forms of exploitation within the cooperative; both the entrepreneur and the central contracting agent have roles that are difficult to monitor, which creates a problem if the occupier of these roles is not the full residual claimant. A full discussion of these matters, however, is more than can be accomplished here.[48]

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The Socialist Exploitation of Society

Though exploitation of some members of the cooperative by others may well be more serious or pervasive than comparable forms of exploitation in the classical capitalist firm, the really significant exploitation in a market socialist system would likely take place across the boundary between the state and the cooperative.[49] This is because a market socialist state effectively owns all of a firm's capital, unlike a capitalist firm in which the residual claimant owns most of the capital. A market socialist state rents capital to the cooperatives in exchange for a capital usage fee and payment to a capital reserve fund to replace capital goods as they are used up or worn out.

To be sure, capital goods are rented all the time under capitalism. When a capitalist firm rents a piece of equipment, it is required to maintain the equipment properly and to pay a rental fee. That fee covers the depreciation of the asset and the equivalent of an interest premium. Long-term rentals that cover the entire useful life of a capital good are, however, quite rare; such assets are usually owned outright by the firms that use them. This is because it is difficult to write complete, easily enforced, long-term rental contracts governing every contingency for most capital goods. In a long-term contract, acceptable maintenance becomes harder to define, and the depreciation of the asset becomes more speculative and problematic. For these reasons, it is usually more efficient for a firm to own long-term capital goods outright. It is precisely here that capitalism possesses advantages over market socialism. For although the state would require the cooperative to maintain its assets properly, what counts as proper maintenance becomes increasingly problematic over the lifetime of an asset. The state would have to set standards and incur other monitoring costs to try to ensure that capital goods are properly maintained.

The interests of the cooperative's members may well lie elsewhere. If their time horizon does not extend beyond the time they are members of the cooperative,[50] it would sometimes be in their interests to defer or skimp on maintenance as a way of increasing net revenues (i.e., residuals). Given that monitoring is both costly and imperfect, there is an opportunity for the residual claimants (the members of the cooperative) to exploit the capital providers (the state) that would not exist in a classical capitalist firm, where the residual claimants own most of the firm's capital.

In addition to the problems associated with maintaining rented capital goods, market socialism would likely encounter difficulties in

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guarding against a too rapid depreciation of capital goods. All (tangible) capital goods wear out eventually, even if they are well maintained; how can the state ensure that the cooperatives do not heedlessly use up society's capital without replacing it? The solution embraced by market socialists is to require each firm to pay into a depreciation fund or, as accountants prefer to call it, a capital reserve fund.[51] But how much should they pay?

The value of an asset to a particular firm may be dramatically different from its historical cost or its replacement value. Indeed, the value of the constellation of assets that constitutes a firm may be significantly greater than the sum of what those assets would fetch if they were sold off piecemeal. Moreover, economic conditions are nearly always in a state of flux, which means that the value of assets is similarly variable and difficult to ascertain. What does it mean to set aside enough funds to maintain the value of your mainframe computer when computer technology is being continually revolutionized? If an asset's value declines sharply for previously unanticipated reasons, the sooner this is acknowledged in the firm's books, the better. This is something that the cooperative would be reluctant to do, since it would cut more deeply into net revenues than if the firm followed the standard straight-line depreciation rule. (Furthermore, skipping costly maintenance procedures on rapidly depreciating capital goods might be rational but forbidden by the rules.)

Even to continue to produce the same item in the changing world of a market economy is itself a speculative decision, making determining the accurate valuation of capital assets very difficult and highly speculative. Depreciation schedules are typically based on initial costs instead of replacement costs, which means that paying a fraction of the asset's historical cost into a capital reserve fund each year may or may not be a way of "maintaining the value of the capital."

What does all of this have to do with exploitation? The epistemological fog surrounding the valuation of firm's assets creates opportunities for the residual claimants in the cooperative, that is, the workers (and the managers and accountants who are answerable to them), to appropriate for themselves some of the value of those assets. There is empirical evidence from what used to be Yugoslavia that lends some support to these speculations about what would happen in a market socialist economy. According to Jan Vanek,

> the danger often referred to in the Yugoslav experience of the work collectivities 'eating up their factories' can therefore be seen not merely in its crude

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> form of lack of maintenance and of replacement of physical assets, excess distribution . . . but also in the more subtle form of greater or lesser depreciation of all assets in real terms through improper or inadequate operation of the enterprise.[52]

Of course, the fact that Yugoslav workers did not own their capital may not be the primary factor responsible for these problems, and so the Yugoslav experience may have little to tell us about what would happen in a market socialist system in this respect. But Vanek's observation is suggestive. In both market socialist firms and the firms of the former Yugoslavia, the workers appoint managers, all the workers are entitled to the residuals, and the firm's capital is effectively owned by the state.

Who gets exploited under these circumstances? Basically, it is the state whose capital the workers are consuming. But since the state gets its capital from its citizens (i.e., taxpayers and workers in other cooperatives), ultimately it is they who would be exploited.

The manipulation of maintenance and depreciation does not create opportunities for exploitation in the classical capitalist firm because the residual claimant is also the provider of capital and can sell his or her interest in the firm at any time. She suffers the full financial consequences of any decisions about maintenance and depreciation—even those that take place in the distant future—because those consequences are capitalized into the value of the firm. Though the owner may or may not have an accurate picture of her wealth, she has no incentive to distort that picture in the way that the residual claimants in a worker cooperative might.[53]

An objection to the foregoing is that this scenario cannot go on forever; as capital goods are eventually used up and must be replaced, the accounting legerdemain will be exposed by the firm's inability to meet its obligations to replace used-up capital goods.[54] This in turn will result in a shutdown of the firm and the loss of jobs. Workers would not be so stupid as to precipitate their own unemployment in the way suggested. The problem with this objection is that it supposes that the state in a market socialist society would pull the plug on insolvent firms as quickly and decisively as impersonal market forces do in a capitalist system. The implausibility of this supposition will be discussed briefly below.

The limited tenure that residual claimants enjoy in the cooperative, coupled with the fact that they cannot sell their claims to the residuals, create additional opportunities for exploitation. Older workers, who

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are closer to retirement, are likely to have shorter time horizons than younger workers. If, as seems plausible, older workers also have disproportionate power and authority in the cooperative, they would have an incentive to advocate investments that allocate cash flows (i.e., residuals) from the future to the present. This could be done in any number ways: for example, by borrowing funds to invest in projects that expand current cash flows at the expense of future cash flows, where the loan is repaid in constant amounts over a period of time that extends beyond the termination date of older workers.[55] In this way, income could be shifted from the future to the present and thus from younger workers to older workers.

It is not only older workers who may have a limited time horizon. Because residual claimant status is held only for as long as the worker is a member of the firm, all workers have a collective interest in shifting costs into the future. They could issue long-term bonds and use the proceeds to increase that year's payout or fringe benefits. Or they could vote themselves large pension benefits with no funding provisions, just as politicians do in dealing with state employees.[56] In these and other ways, present members of the cooperative could exploit future members of the cooperative by various forms of cost shifting. It is important to understand that these problems would probably arise even if most workers were to spend most of their working lives with one firm. For even then, they would retire at some point, and their interest in the well-being of the firm would likely be diminished if not extinguished.

One way to lengthen their time horizon would be to allow them to sell or bequeath their membership rights in a cooperative, but I assume this is something socialists would not favor on other grounds. Under more realistic assumptions about labor mobility, the horizon problem, as Jensen and Meckling call it, is exacerbated. In the classical capitalist firm the residual claimant is also the provider of capital and the primary decisionmaker. Because he can sell his interest in the firm at any time, the capitalist, unlike the workers in a cooperative, must have a much longer time horizon.

Obviously, the preceding comparative discussion of the classical capitalist firm and the cooperative of comparable size relies on certain assumptions, the most important of which is that, under both systems, people have some penchant for opportunism which is both variable across individuals and not easily discoverable. If people had no propensity to act opportunistically, then the vulnerability of an organization to opportunism would be of no consequence. Similarly, if the

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propensity to act opportunistically were invariable or if everyone's penchant for it were easily known, allowances could be made. For example, if it could be easily known how much a worker would shirk, either because everyone shirks about the same amount or because everyone's propensity to shirk is strongly correlated with some easily observable attribute, their pay could be adjusted accordingly. But if the penchant for opportunism is variable and not easily known, an organization's more opportunistic members will prosper at the expense of the more virtuous members. Given the further plausible assumption that people will not stand idly by while they are being victimized if they can do something about it, it is reasonable to suppose that either the organization will change or their propensity to act opportunistically will change. The result is that the incidence of opportunism would increase until it came up against the limits imposed by the incentive structure of the organization. This is why it is important to investigate the extent to which organizational forms permit (and thus effectively encourage) opportunistic behavior.

The plausibility of the assumptions used above are enhanced when we realize that market socialists are proposing their system as a replacement for existing capitalist systems, if not within the next few years, at least within the next few generations. This means that individuals who inhabit this system will be close lineal descendants of existing individuals, with all the psychological continuities that entails. These continuities do not rule out significant changes in consciousness as a market socialist system takes hold. However, proponents of market socialism seek to eschew, or at least should seek to eschew, the utopianism of nineteenth- and early twentieth-century socialist thought and practice—a utopianism that has led to serious credibility problems for socialism in the late twentieth century. This precludes assuming that the participants in a market socialist system would at the outset be radically different from existing individuals in their propensity to act opportunistically or, more generally, in their self-interestedness. Indeed, some of the appeal of market socialism trades on motivational continuities between the current system and market socialism. If one assumes that at least at the outset people in a market socialist system have a nontrivial penchant for opportunism, then a potential for exploitation would be found in the hearts of the inhabitants of this type of system, and it is apposite to investigate how the organizational forms of a market socialist economy handle that potential in comparison to the predominant capitalist organizations.

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Corporations and Exploitation

Thus far, market socialism has been compared to the classical capitalist firm. The other predominant organizational form in a capitalist system is the open corporation. In contrast to the classical capitalist firm, the amount of capital controlled by the open corporation is usually too large to be provided by one individual. Following Coase's original insight, organizational economists have argued that there are important transaction-cost efficiencies to bringing such large amounts of capital under one decisionmaking roof.[57]

Obviously, these efficiencies are not *always* present, since if they were, there would be no more classical capitalist firms. Part of the explanation for the persistence of the classical capitalist firm in the face of competition from large corporations is that whatever the advantages of bringing large amounts of capital under one decisionmaking roof, there is at least one undeniable cost: equity ownership is separated from operational control. Managers of the open corporation are at most fractional residual claimants, and most shareholders have no say in how the firm is managed. On the face of it, this does not seem any better than the situation in the (large) worker cooperative in a market socialist system.

Indeed, it would seem that the cooperative has an advantage over the open corporation in that the latter's management is elected by and answerable to the workers. Since the workers are the residual claimants, they have an obvious interest in management not engaging in opportunism at the cooperative's expense. On the other hand, what is in the cooperative's collective interest may not be in the interests of the workers individually. In a large cooperative, no one worker has enough of a stake to make it cost-effective to monitor management. Making matters worse, the task of monitoring management is likely to be more difficult in a larger cooperative because the manager's job is more complex and usually requires more specialized knowledge and hard-to-assess skills. The physical proximity of the workers to management is no guarantee that the former could do a good job monitoring the latter. Yet, it seems that the shareholders in the open corporation face the same problem. Few of them have enough of a stake in the firm even to try to monitor management.

Part of the solution to the monitoring problem in the open corporation comes from the board of directors. They monitor management by directly investigating its performance, ratifying major investment decisions, hiring a public accounting firm, and supervising the internal

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audit department.[58] Let us suppose that the workers put together a similar body, perhaps elected from a Fraternity of Residual Claimants. In the self-managed firms of what used to be Yugoslavia, this body was called the workers' council. In a market socialist system, the members of these workers' councils would all be substantial residual claimants—substantial in the sense that their financial well-being would be much more dependent on the health of the firm than is the case with the average board member of a corporation.[59] Offsetting this superior incentive to monitor, however, is the fact that the interests being protected would be systematically different. This is why there would be opportunities for exploitation in a market socialist system that are not found in the open corporation under capitalism.

Three facts are of decisive importance in this connection. First, neither members of workers' councils nor the workers themselves would own any of the firm's capital in the way that stockholders in the open corporation do. The state would effectively own the cooperative's capital. Second, the workers' claim on the residuals would be limited to their tenure at the firm. Third, that claim would be inalienable. That is, it could not be sold to outsiders or indeed to anyone. What this means is that a workers' council, unlike a board of directors, would represent only current residual claimants—not capital providers and not future residual claimants. By contrast, the board of directors of the open corporation represents shareholders who not only have a claim on the firm's residuals that extends indefinitely into the future, but who also have alienable shares in the firm itself and, by implication, in all the capital the firm owns. To the extent that the board accurately represents the interests of the shareholders, it will be concerned about the long-term consequences of management's decisions for the equity value of the firm. In the real world of capitalism, of course, incompetent management is sometimes protected, top managers can be grossly overpaid, and various forms of self-dealing take place. But capitalism has mechanisms (discussed briefly below) for policing these abuses that are unavailable to market socialist cooperatives.

One possible solution to the problem of the workers' limited stake in the firm is to include representatives of the capital providers, that is, state officials, on the council. In that case, however, it would no longer be a true workers' council, since the workers' right of self-management would be attenuated. Another difficulty with this solution is that state officials, or those who appoint them, are political animals and as such may have a different agenda than protecting the interests of taxpayers. The opportunities for exploitation this might

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create are too vast to be fully detailed here, though they will be sketched briefly at the end of this section. Finally, the systemic differences in interests between the residual claimants and the providers of capital make this arrangement inherently unstable. Representatives of one or the other group would likely achieve a position of dominance (perhaps through the exercise of state power) from which it could serve its own interests at the expense of the losing group. If, for example, the workers' representatives achieved hegemony, the problem of the exploitation of taxpayers would recur. On the other hand, if the state achieved dominance, it could exploit the workers in the cooperative, and would in any case reintroduce the problems of full state ownership of the means of production.

Aside from these difficulties, an important liability imposed by the nature of capital ownership in the large cooperative is that there is no securities market in which ownership shares in the cooperative can be bought and sold, however ownership is defined. There is no market in shares to the residuals, nor is there any market in the constellation of assets that we think of as the firm. The stock market in a capitalist system is an extremely sensitive, albeit imperfect, device by which the value of a firm is constantly assessed and reassessed. It represents the collective judgment of an enormous number of people who have a vital personal interest in making a correct assessment of the equity value of large corporations. As stock markets consistently demonstrate, the value of a firm can diverge dramatically from the book value of its assets. The explanation for this is to be found in the market's collective judgment about the future income stream likely to flow from these assets positioned to serve certain markets. The absence of a stock market in the market socialist economy would deprive the capital providers of an important source of independent judgment about the prospects of the firms to which they are lending all the capital the cooperatives use.

A related liability of a market socialist system is a weak and ineffective market for corporate control. For example, members of the Yezhov cooperative might not realize how poorly their management is doing relative to the firm's potential. Yet corporate raiders from the Beria cooperative cannot buy control of the Yezhov cooperative, oust the latter's ineffective management, and bring the Yezhov cooperative up to its full potential. The most they can do is offer to join the Yezhov cooperative for a share of the residuals and try to be elected to the manager's job. The prohibition on a market for corporate control would serve to insulate ineffective managers and their workers' coun-

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cils from market-based accountability. This would hurt the other residual claimants (*viz.*, the other workers in the cooperative) as well as the capital providers.

Thus, the interests of the capital providers—the taxpayers—would probably be very poorly protected under market socialism. Those in control would be likely to serve primarily the interests of the residual claimants (the workers) or their elected representatives on the workers' councils. Capital providers would not be in a good position to know if and when the value of their assets is being appropriated by opportunistic managers and workers. They would, therefore, be prime targets of exploitation. After all, they could not sell their assets, nor could they control the management of the cooperatives that did control those assets.

This completes the discussion of the relative weaknesses of the worker cooperative in comparison with the predominant organizational forms under capitalism. At this level of abstraction, there is no way of saying how much exploitation would actually take place in any particular market socialist system, since what happens in any economic system as it exists on the ground, so to speak, is a function of many variables. Nevertheless, there is a substantial literature on the economics of property rights which suggests why "property rights matter."[60] Since what distinguishes market socialism from capitalism is their respective systems of property rights, it is reasonable to believe that these problems with the structure of property rights in market socialism would in fact be consequential.

Socialist Politics

Even at a theoretical level, however, there is more to be said. Although a full-scale evaluation of the potential for exploitation under market socialism would require a more elaborate discussion of state control of new investment than can be presented here, some of the weaknesses of this aspect of market socialism can be indicated in a preliminary way. Whatever the institutional details, the two salient facts about the control of new investment in a market socialist system are that new investment would be determined by political institutions, and the mandate of those political institutions would include goals other than making profits. Perhaps the most important of these goals would be overcoming the irrationalities of the market: unemployment, regional

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development imbalances, externalities, and a whole host of other social ills more or less directly traceable to the operation of the market.

Although capitalist societies also try to deal with these problems, what is distinctive about a market socialist system is that the state is supposed to use its control over new investment as a principal means of doing so. The difficulty with this arrangement is that it creates very strong incentives for what public choice economists and political scientists call "rent-seeking" on a scale hitherto unseen in the West. Firms that would otherwise fail can stay alive by arguing that they need new investment to respond to new conditions, to prevent massive unemployment, to deal with regional development imbalances and historical inequities, to clean up the pollution they have created, and so on. The political organizations to which they would appeal ultimately answer to electorates that are so large that voters would find them prohibitively costly to monitor. This makes the exploitation of taxpayers more than likely.

This is a special case of a more general problem for market socialism: The verdict of the market is always subject to challenge by appeal to the state. This opens the state to the influence of those whose private agenda does not serve the public interest. This is not reducible to a matter of simple corruption that could be prevented by public-spiritedness among those state employees charged with decisionmaking. Rather, it is a natural consequence of at least three important facts about market socialism and the associated environment. First, the democratic state must use multiple decision criteria in its investment decisions; some of these criteria would be unrelated to the profitability of the investment. Second, there would inevitably be important informational asymmetries between firms and the state. Finally, there is a natural tendency for even the best-intentioned citizens to conflate their own private interests with the public interest. These factors are, to a lesser extent, present in contemporary welfare-state capitalism. The problems they create plague all forms of interventionism, as has become increasingly apparent in the past few decades as the state has achieved ever-greater powers of appeal in capitalist societies. Such problems would be endemic to a system in which the state owned all or most capital and was charged with controlling all or most new investment. In effect, market socialism would dramatically worsen some of the most regrettable features of contemporary welfare-state capitalism.

Market socialism promises the realization of the socialist vision of the good society. If the argument of this essay succeeds, market social-

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ism cannot fulfil that promise, because part of the socialist vision includes the virtual elimination of exploitation. Not only would exploitation continue under market socialism, but it would be worse than under capitalism.

One might ask, why not accept those criticisms but change the socialist vision of the good society? Suppose the market socialist conceded that her system would be more exploitative than capitalism. Market socialism might still be better than capitalism in other respects, and thus better in some more comprehensive sense. For example, it might be less alienating and more equal in its distribution of wealth and income.

There are two problems with this move. One is that the concession about exploitation is arguably an admission that market socialism is a more unjust system than capitalism, since it permits and encourages forms of injustice, namely exploitation, that capitalism prevents or discourages. If, as Rawls maintains, justice is the first virtue of social institutions, this is a serious matter. Second, the socialist vision of the good society grows out of a critique of capitalism. The promise of socialism is the promise of an economic system that does not cause the social ills or defects that those on the left have been attributing to capitalism since the nineteenth century. To constrain the vision of the good society in such a way that tradeoffs have to be made in the tally of virtues and vices is to weaken the case for socialism, perhaps fatally, both at the theoretical and at the popular level.

The only remaining question is whether another version of market socialism could avoid these problems or at least do no worse than capitalism. My own view, for which I cannot argue here, is that it could not, at least not without seriously compromising its character as a socialist economic system, or by giving up on other elements of the socialist vision of the good society (e.g., achieving relative equality of material condition), or both.[61]

NOTES

1. It is appropriate to speak of "the" capitalist system in this context since Marx's critique is not aimed at this or that particular capitalist system but instead at all such systems, or more exactly, the features that all and only capitalist systems have in common.
2. For a full discussion of Marx's account of these systemic evils, see my *Marx's Radical Critique of Capitalist Society* (New York: Oxford University Press, 1990), chs. 2–4.

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3. Some discussion of these problems is fairly common in the writings of most market socialists, not to mention standard economic textbooks. For a clear, concise statement from a market socialist perspective, see Saul Estrin and David Winter, "Planning in a Market-Socialist Economy," in Julian Le Grand and Saul Estrin, eds., *Market Socialism* (Oxford: Clarendon Press, 1989), 107–15. For a more elaborate discussion (not in the context of the debate between capitalism and socialism), see Allen Buchanan, *Ethics, Efficiency, and the Market* (Totowa, N.J.: Rowman and Allenheld, 1985), ch. 2.
4. For a good discussion of this point, see Allen Wood, "Marx and Equality," in John Roemer, ed., *Analytical Marxism* (Cambridge: Cambridge University Press, 1986), 283–303.
5. See Karl Marx and Frederick Engels, *The Communist Manifesto* (New York: International Publishers, 1948), 9–21.
6. See, e.g., Raymond Plant, "Socialism, Markets and End States," in Le Grand and Estrin, 54; David Miller, "Why Markets?" in Le Grand and Estrin, 31–32; John Roemer, *Free to Lose* (Cambridge, Mass.: Harvard University Press, 1988); Andrew Levine, *Arguing for Socialism* (London: Routledge and Kegan Paul, 1984), 133–34; David Schweickart, *Capitalism or Worker Control?* (New York: Praeger, 1980), 93–94.
7. Socialists need not be so dogmatic as to insist that *all* private ownership must be prohibited. For example, a system could be socialist even if small-scale agriculture were entirely private.
8. For discussion of Mondragon, see Hendrik Thomas and C. Logan, *Mondragon: An Economic Analysis* (London: Allen and Unwin, 1982). For discussion of Yugoslavia, see Svetozar Pejovich, *The Market-Planned Economy of Yugoslavia* (Minneapolis: University of Minnesota Press, 1966); Deborah D. Milenkovitch, *Plan and Market in Yugoslav Economic Thought* (New Haven: Yale University Press, 1971); Jaroslav Vanek, *The Labor-Managed Economy* (Ithaca: Cornell University Press, 1977); Ljubo Sirc, *The Yugoslav Economy under Self-Management* (St. Martin's Press, 1979); Saul Estrin, *Self-Management: Economic Theory and Yugoslav Practice* (Cambridge: Cambridge University Press, 1983); H. Lydall, *Yugoslav Socialism: Theory and Practice* (Oxford: Clarendon Press, 1984).
9. For references, see n11 below. The only contemporary socialists of whom this author is aware who advocate neither central planning nor markets are Michael Albert and Robin Hahnel. See Michael Albert and Robin Hahnel, *The Political Economy of Participatory Economics* (Princeton, N.J.: Princeton University Press, 1991). For criticisms of this model, see David L. Prychitko, "Marxism and Decentralized Socialism," CRITICAL REVIEW 2, no. 4 (Fall 1988): 132–39.
10. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), ch. 7.
11. See the following: Schweickart; Jaroslav Vanek, *The General Theory of*

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Labor-Managed Economies (Ithaca: Cornell University Press, 1970), and id., *The Labor-Managed Economy*; Radoslav Selucky, *Marxism, Socialism, Freedom* (New York: St. Martin's Press, 1979); Branko Horvat, *The Political Economy of Socialism* (Armonk, N.Y.: M. E. Sharpe, 1982); Joshua Cohen and Joel Rogers, *On Democracy* (New York: Penguin Books, 1983); Robert Dahl, *A Preface to Economic Democracy* (Berkeley: University of California Press, 1985); Samuel Bowles and Herbert Gintis, *Democracy and Capitalism* (New York: Basic Books, 1986); Joshua Cohen, "The Economic Basis of Deliberative Democracy," *Social Philosophy & Policy* 6 (1989): 25–50; Saul Estrin, "Workers' Co-operatives: Their Merits and Limitations," in Le Grand and Estrin, 165–92; Miller, *Market, State, and Community*. I do not mean to suggest that all of these authors unanimously agree about all of the details that follow in the text. Rather, what they share, or seem to share, is a belief that though the economic system should remain a market economy, it should be changed so that some type of worker cooperative would be the main form of economic organization. Some of these authors (e.g., Bowles and Gintis) are too vague in their descriptions for one to ascribe to them anything more definite.

12. Much of this digression echoes Schweickart, 52–53.
13. See, e.g., Selucky, ch. 6; Schweickart, 138–40, 150–58; Horvat, ch. 11; Alec Nove, *The Economics of Feasible Socialism* (London: Allen and Unwin, 1983), 197–98, 208; Cohen and Rogers, ch. 6; Dahl; Miller, *Market, State, and Community*, ch. 12.
14. See, for example, Jaroslav Vanek, "The Yugoslav Economy Viewed through the Theory of Labor Management," in Vanek, *The Labor-Managed Economy*; Selucky, 49–50, 52ff; Cohen and Rogers, 161–62; Nove, 207–8; Horvat, 230; Levine, 9–10.
15. Three authors who favor market socialism but do not straightforwardly endorse state control of new investment are David Winter, Saul Estrin, and David Miller (Estrin and Winter, 115–19; Estrin, "Workers' Cooperatives," 183–91; Miller, *Market, State and Community*, 309–11). They see potential dangers to democracy and efficiency in the latter. However, their positive proposals do not make it clear if they believe that new investments should be determined largely outside of the political process or not. This question is of considerable importance, since political control of society's economic destiny seems to be a common thread in nearly all nonanarchist socialist thought.
16. See, e.g., Selucky, 139, 180–82; Horvat, 190; Julian Le Grand and Saul Estrin, "Market Socialism," in Le Grand and Estrin, 4, 7; Nove, 215–16; Kai Nielsen, *Equality and Liberty* (Totowa, N.J.: Rowman and Allenheld, 1985), *passim*; Bowles and Gintis, 206–7; Miller, *Market, State, and Community*, 327–30; Estrin and Winter, 115; David Winter, "Market Socialism and the Reform of the Capitalist Economy," in Le Grand and Estrin, 162.
17. Estrin, "Workers' Cooperatives," 171. See also Horvat, 270.

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18. This is David Miller's suggestion in *Market, State, and Community*, 153.
19. Schweickart, 143.
20. See n3.
21. For a sensitive discussion of the tension in market socialism between commitment to the market and commitment to certain end states as part of the socialist vision of the good society, see Plant, "Socialism, Markets and End States," in *Market Socialism*, 50–77.
22. Estrin, "Workers' Cooperatives," in *Market Socialism*, 170–71.
23. For Marx's argument, see Karl Marx, *Capital*, vol. 1 (Moscow: Progress Publishers, 1977), ch. 1. I have attempted a comprehensive discussion and critical evaluation of Marx's argument and these reformulated arguments in ch. 3 and chs. 4 and 5, respectively, of *Marx's Radical Critique*. My purpose here is to represent, without criticizing, central elements of a socialist critique of a capitalism as a way of explaining the motivation of some of the elements of market socialism.
24. See *Marx's Radical Critique*, ch. 3 (esp. 74–86), and the references cited therein for a thorough discussion of these problems. Though not everyone who writes on this topic sees the same problem with the labor theory, almost everyone sees some problem or other with it, or at least with Marx's argument for it.
25. For a discussion of this point, see Lawrence Becker, *Reciprocity* (London: Routledge and Kegan Paul, 1986), 143.
26. This view, or something close to it, is advocated or discussed in the following works: Nancy Holmstrom, "Exploitation," *Canadian Journal of Philosophy* 7 (1977): 359; Gary Young, "Justice and Capitalist Production: Marx on Bourgeois Ideology," *Canadian Journal of Philosophy* 8 (1978): 441–44; Jon Elster, *Making Sense of Marx* (Cambridge: Cambridge University Press, 1985), 167; Richard Miller, "Marx and Aristotle: A Kind of Consequentialism," in Kai Nielsen and Steven C. Patten, eds., *Marx and Morality*, *Canadian Journal of Philosophy* supp. vol. 7 (Guelph, Ont.: Canadian Association for Publishing in Philosophy, 1981), 337; Arthur DiQuattro, "Value, Class, and Exploitation," *Social Theory and Practice* 10 (1984): 70–71; Jeffrey Reiman, "Exploitation, Force and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen," *Philosophy and Public Affairs* 16 (1987): 4.
27. G. A. Cohen, "The Labor Theory of Value and the Concept of Exploitation," *Philosophy and Public Affairs* 8 (1979): 338–60.
28. G. A. Cohen, "The Structure of Proletarian Unfreedom," *Philosophy and Public Affairs* 12 (1983): 3–33; George Brenkert, "Cohen on Proletarian Unfreedom," *Philosophy and Public Affairs* 14 (1985): 91–98; John Gray, "Against Cohen on Proletarian Unfreedom," *Social Philosophy & Policy* 6 (1988): 77–112.
29. John Roemer has a very different conception of exploitation which does not seem to be most naturally understood as a failure of reciprocity. See

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John Roemer, *A General Theory of Exploitation and Class* (Cambridge, Mass.: Harvard University Press, 1982), and id., "Property Relations vs. Surplus Value in Marxian Exploitation," *Philosophy and Public Affairs* 11 (1982): 281–314. I have criticized Roemer's conception of exploitation as it applies to capitalism in *Marx's Radical Critique*, ch. 5.

30. This is a common theme in most of the works on Yugoslavia cited in n8. See especially Sirc, chs. 3, 7, and 10. See also Saul Estrin and William Bartlett, "The Effects of Enterprise Self-Management in Yugoslavia: An Empirical Study," in Derek C. Jones and Jan Svejnar, eds., *Participatory and Self-Managed Firms* (Lexington, Mass.: Lexington Books, D. C. Heath & Co., 1982), 88–89.
31. Much of this literature can be conceived of as part of a larger research program on the economics of property rights. For a useful overview of this program, see Thrainn Eggertson, *Economic Behavior and Institutions* (Cambridge: Cambridge University Press, 1990). See also Martin Ricketts, "The Economic Analysis of Institutions," CRITICAL REVIEW 4, nos. 1–2 (Winter-Spring 1990): 266–83.
32. Ronald Coase, "The Nature of the Firm," *Economica* N. S. 4 (1937): 386–405, reprinted in G. S. Stigler and K. E. Boulding, eds., *Readings in Price Theory* (Homewood, Ill.: Richard D. Irwin, 1952).
33. Armen Alchian, "Uncertainty, Evolution, and Economic Theory," *Journal of Political Economy* 58 (1950): 211–21.
34. Ibid., 218.
35. The term "classical capitalist firm" comes from Alchian and Demsetz. See Armen Alchian and Harold Demsetz, "Production, Information Costs and Economic Organization," *American Economic Review* 62 (1972): 777–95. The term "open corporation" is due to Eugene Fama and Michael Jensen. See their articles, "Agency Problems and Residual Claims," *Journal of Law & Economics* 26 (1983): 327–48, and "Separation of Ownership and Control, *Journal of Law & Economics* 26 (1983): 301–25. There are other organizational forms in a capitalist system, such as partnerships and closely held corporations. In modern capitalism, however, the classical capitalist firm and the open corporation predominate.
36. See n35.
37. Alchian and Demsetz, 778.
38. Notice that shirking is necessarily deceptive and unanticipated. If the behaviors in question (e.g., loafing on the job) could be wholly anticipated, their value would be reflected in the market price for the factor in question. Everyone—including bosses—expects janitors, nightwatchmen, maintenance men, state highway workers, assistant deans, etc., to spend much of their time out of sight doing nothing productive. Although these people are loafing, they are not shirking. To shirk in jobs like these requires both ingenuity and a remarkably strong antipathy toward productive labor.

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39. Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), 30.
40. Alchian and Demsetz, 782.
41. For a nuanced critical discussion of Alchian and Demsetz, see Louis Putterman, "On Some Recent Explanations of Why Capital Hires Labor," *Economic Inquiry* 22 (1984): 171–87. Putterman points out (ibid., 173–74) that Alchian and Demsetz assume the irrelevance of other factors, e.g., the technology of monitoring, the psychology of workers, that might make other monitoring arrangements more efficient, but he does not claim that these other factors are usually present and significant. In light of this, perhaps it is best to interpret Alchian and Demsetz's story as being qualified by various *ceteris paribus* clauses.
42. Yoram Barzel, "The Entrepreneur's Reward for Self-Policing," *Economic Inquiry* 25 (1987): 103–16.
43. Ibid., 112–13.
44. Notice that the open corporation has the same disability as the cooperative in this regard, since the manager of the open corporation is at most a fractional residual claimant.
45. Keith Bradley and Alan Gelb, "Motivation and Control in the Mondragon Experiment," *British Journal of Industrial Relations* 19 (1981): 211–31.
46. For a good discussion of the selection biases in the Mondragon cooperatives, see Keith Bradley and Alan Gelb, "The Mondragon Cooperatives: Guidelines for a Cooperative Economy?" in Jones and Svejnar, 163–67.
47. Ibid.
48. These and related matters are investigated in detail in my forthcoming book, *The Philosophy and Economics of Market Socialism.*
49. Many of the points in the remainder of this section are based on Jensen and Meckling's discussion of the inefficiencies of what they call "the pure rental firm" and the Yugoslav cooperative. See Michael Jensen and William Meckling, "Rights and Production Functions: An Application to Labor-Managed Firms and Codetermination," *Journal of Business* 52 (1979): 476–97.
50. Actually, a weaker assumption will do. One need only assume that the workers prospectively believe that their concern and interest in the firm will diminish to some nontrivial extent after they leave the firm, either through retirement or through a change in their place of employment. On the face of it, this is not an unreasonable supposition and is indeed highly plausible if one further assumes that labor mobility would be high enough so that many workers would not stay at a firm long enough to develop profound attachments to it. This further assumption about labor mobility is quite reasonable in light of the dynamism of all known market economies.
51. Donald Kieso and Jerry J. Weygandt, *Intermediate Accounting*, 4th ed. (New York: John Wiley & Sons, 1983), 524ff.

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52. Jan Vanek, *The Economics of Workers' Management: A Yugoslav Case Study* (London: Allen and Unwin, 1972), 220.
53. The only exception might be if and when she is trying to get a large loan. Debt financing of this magnitude is uncommon in classical capitalist firms, however, unless it is from friends or relatives (e.g., Korean small businesses). In such instances, there are other mechanisms to mitigate the problem discussed in the text.
54. Though, for the reasons cited above, what counts as "replacing" capital in a changing environment is a contentious question. One can expect that firms and the state will have systematically different opinions on this.
55. Jensen and Meckling, 496.
56. Ibid., 484.
57. Vertical integration is a way of bringing technologically separable stages of production under one decisionmaking roof. This is one reason why organizational economists are interested in the question of the determinants of vertical integration. See, e.g., Williamson, chs. 4 and 5; and Benjamin Klein, William Crawford, and Armen Alchian, "Vertical Integration, Appropriable Rents, and the Competitive Contracting Process," *Journal of Law & Economics* 21 (1978): 297–326.
58. For a more elaborate discussion of these monitoring instrumentalities, see the articles by Fama and Jensen cited in n35.
59. This is not universally true, though. Sometimes, board members have an enormous personal financial stake in the firms on whose boards they serve. For a discussion of this point, see Harold Demsetz, "The Control Function of Private Wealth," in Harold Demsetz, ed., *Ownership, Control, and the Firm*, vol. 1 (Oxford: Basil Blackwell, 1988), 229–35. For some empirical evidence about concentrations of ownership, see Harold Demsetz and Kenneth Lehn, "The Structure of Corporate Ownership: Causes and Consequences," *Journal of Political Economy* 93 (1985): 1155–77.
60. For surveys of that literature, see Erik Furubotn and Svetojar Pejovich, "Property Rights and Economic Theory: A Survey," *Journal of Economic Literature* 10 (1972): 1137–62; and Louis De Alessi, "The Economics of Property Rights: A Review of the Evidence," *Research in Law & Economics* 2 (1980): 1–47.
61. I argue for this in the final chapter of my forthcoming book, *The Philosophy and Economics of Market Socialism*.

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Richard A. Posner

LAW AS POLITICS: HORWITZ ON AMERICAN LAW, 1870–1960

The long-awaited second volume of Morton Horwitz's history of American legal thought covers the period 1870 to 1960. The focus is on academic law. Horwitz's thesis is that every generation rebels against the existing conceptual structure of law, but then establishes its own equally formalistic structure to replace it. The cycle can be broken only if the essentially political character of law is faced up to squarely. Unfortunately, Horwitz has attempted to reduce a century of American legal history to an academic debate over formalism, which, in turn, he reduces to the personal idiosyncrasies of some of the participants. However, the book also contains a valuable, close-grained intellectual history of the legal profession's struggle to adapt legal categories to changed social and economic conditions.

Halfway through *The Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992), a dense, mistitled, indifferently written and poorly organized—in a word, disappointing—sequel to Professor Horwitz's prizewinning history of American legal thought before the Civil War,[1] I was seized by an impulse to write the editor of CRITICAL REVIEW and tell him that I wanted to be released from my undertaking to review it. I didn't want

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Judge Richard A. Posner, U.S. Court of Appeals for the Seventh Circuit, 219 South Dearborn Street, Chicago, IL 60604, is Senior Lecturer, University of Chicago Law School. He thanks Jeffrey Friedman, Elena Kagan, Daniel Klerman, Lawrence Lessig, Martha Nussbaum, Katharine Silbaugh, and Cass Sunstein for helpful comments on a previous draft.

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to finish it, let alone write about it. But I persevered—and soon the clouds lifted, the shape and aim of the work came into view, the end was within sight—and when I had finished I decided that, despite grave faults both of substance and of presentation, it contained enough interesting material to warrant more attention than all but the most patient and dedicated scholars were likely to devote to it.

The earlier book was a study of the evolution of the American common law—the body of originally English judge-made doctrines dealing mainly with accidents, property, contracts, and commercial instruments. Horwitz argued that after the Revolution bold, innovative American judges had recast doctrines designed for a static post-feudal agrarian economy in a mold that facilitated—indeed, that subsidized—industrialization and economic growth. The process of transformation was complete by 1850. After that the judges sought to obfuscate, mystify, and legitimate the inegalitarian redistribution of income and wealth that accompanied the nation's transition from an agrarian to an industrial economy[2] (and that the judges themselves had fostered) by abandoning their free-wheeling, goal-oriented decision-making methods in favor of legal formalism—"a scientific, objective, professional, and apolitical conception of law."[3]

Plausible, arresting, fashionably Marxian (if not quite Marxist), and clearly argued, Horwitz's thesis nevertheless was vulnerable to several criticisms. His use of evidence had been careless, selective, even tendentious.[4] He had romanticized eighteenth-century law and by doing so had exaggerated the exploitative character of nineteenth-century law.[5] Demonstrably an economic innocent, he had overlooked efficiency justifications for legal doctrines and misunderstood the concept of subsidization, which requires a baseline that he had failed to specify[6]—for it is hardly useful to describe every legal change as the conferral of a "subsidy" on those who benefit from it. And if the judges really had been bent on putting one over on the public, why had the great "redistributive" decisions been so forthright in grounding legal doctrine on economic policy rather than just on the usual obfuscatory talk about rights, justice, and precedent?[7] Why, in other words, had these judges not tumbled to the rhetorical advantages of legal formalism long before 1850? It was not as if the formalist tradition were new. Its discovery had not waited upon the development of a differentiated, organized, intellectualized legal profession, as Horwitz supposed. It could be traced back to Cicero, and more proximately to the Federalist papers and the opinions of John Marshall.

These criticisms did not demolish Horwitz's book; it stood as a

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formidable synthesis of historical materials and a powerful, if partial, vision of the development of American legal thought. They were nonetheless substantial criticisms to which Horwitz might have been expected to react by reexamining his thesis. Instead he has written a book that picks up the story where he left it at the end of the earlier book and carries it through to 1960 as if only chronology distinguished the two books. Much more does. Although the new book contains no direct reference to the criticisms of the earlier one, the preface acknowledges deep misgivings about the possibility of objective, consistent, determinate causal explanations of historical phenomena. The earlier book was an essay in economic determinism. Skepticism about historical causality was not in evidence. Horwitz had argued that class bias rooted in economic interest and increasingly disguised by formalist rhetoric had made of legal doctrine a well-honed tool for redistributing wealth from agriculture to business, passive to active, weak to strong, Labor to Capital. Class bias is an intermittent causal factor in the new book but equal emphasis is placed on changes in the economic environment, such as the growth of new forms of property; on emotional or psychological factors, including—remarkably—love and its vicissitudes; and on changes in the *Weltanschauung*, including the development of quantum theory. Equal emphasis does not mean great emphasis. Horwitz's diminished faith in Marxian explanations is not entirely offset by his newly acquired interest in Freudian and other psychological modes of explanation. He has grown shy about all causal explanations of history. Whether he is shy because the criticisms of his first book hit him where he lived or because he wishes to keep up with changing fashions in historiography must remain a matter for conjecture.

The first book examined the major doctrinal developments in a reasonably discrete period in American legal history—from the Revolution to the Civil War. This was the period, as Horwitz conceived it, of the reception of English common law by the judges of the newly independent nation, the transformation of that law in favor of commercial interests, and the capping of that transformation by the judiciary's adoption of the formalist style. The book's coverage was comprehensive (although not complete) because, while it was limited to the common law, most American law of the period *was* common law; and the period is recognizably "historical" because it ended more than a century ago. The second book begins *in medias res*—in the heyday of formalism—and, ending as it does in 1960, neither brings the story up to the present nor cuts it off at a natural break in historical continuity.

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In some respects, to be sure, 1960 could be thought a watershed year in American legal history; it is close to the beginning of the brief but memorable heyday of the Warren Court and of the vast expansion in federal litigation that ensued, and that continues to this day. But these are not watershed events in American law as Horwitz understands it. The book has little to say about such far-reaching doctrinal and institutional developments of the tumultuous near-century that is the book's ostensible subject as the expansion of tort liability; the procedural revolution wrought by the Federal Rules of Civil Procedure; the rise of new fields like antitrust, labor, public utility regulation, income taxation, securities, and worker's compensation; the growing concern with civil liberties and civil rights; increased specialization within the legal profession; the shifting interfaces between federal and state judicial power; the advent of large law firms; the shift from apprenticeship to classroom education as the dominant method of entry into the profession; the rise of the law clerk; and the codification of commercial law. American law for Horwitz consists of a handful of confused or tendentious conceptual entities, such as "property," "causation," "the corporation," and "the police power." Perfected by reactionaries and their apologists, mainly in the last quarter of the nineteenth century, the precarious formalist edifice that Horwitz calls "Classical Legal Thought" was first undermined by social and economic change, then unmasked by "Legal Realists" and other "Progressive" legal thinkers psychologically disposed to rebel. Oliver Wendell Holmes, having contributed both to the creation of the classical edifice and to the attack on it, is the key transitional figure—transformed by a love affair. Eventually the Realists, the Progressives, became the victims of their own conceptualizations, such as "judicial self-restraint"; by the 1950s, the Progressives had become reactionaries. I am burlesquing the book a bit, but only a bit.

While the first book focused on the most important legal doctrines of the era it discussed, the second, pitched at a higher level of abstraction, focuses on a debate in jurisprudence—the debate between formalists and realists. That debate petered out in the 1940s, so that the temporal as well as the thematic scope of the second book is also more truncated than the title would lead one to expect. Almost 40 percent of the book is devoted to Legal Realism, which even when conceived as broadly as Horwitz conceives it is a thread in the intricate tapestry of American legal history that only law professors, and precious few of them, would consider central. But then the book is primarily about what law professors (or judges writing extrajudicially, professorially)

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said, secondarily about judicial doctrines, and virtually not at all about the operating or institutional level of law. While one might have supposed that "law" meant a type of social control different from ethics on one side and politics on the other, or the people and organizations that make up the legal system, or merely the body of legal rules—the last being the implicit conception of law in the first book—Horwitz has come to think of law in a fourth sense: as the discourse of law professors and other jurists. The real subject of the book is "American legal thought as a coherent scholarly field separate from constitutional history" (273).

I do not want to exaggerate the discontinuity between the books. In the first, naughty Realist caterpillars like Lemuel Shaw turn into formalist butterflies after 1850. In the second, naughty adolescents like Jerome Frank and Karl Llewellyn chase the formalist butterflies until turning into formalist butterflies themselves. Nevertheless they are very different books.

Horwitz as Textual Interpreter and Political Economist

I want first to consider the extent to which the principal criticisms of its predecessor apply to the new book. I must leave it to specialists to determine whether Horwitz still is careless with historical evidence, but I have a concern on this score that is based on his discussion of Holmes's view of contract. Horwitz points to "three sentences . . . which were as influential as any [Holmes] wrote" (38). The sentences (from Holmes's essay "The Path of the Law") are:

> You always can imply a condition in a contract. But why do you imply it? It is because of some belief as to the practice of the community or of a class, or because of some opinion as to policy, or in short, because of some attitude of yours upon a matter not capable of exact quantitative measurement, and therefore not capable of founding exact logical conclusions.[8]

The suggestion that these three sentences are as influential as *any* sentences of Holmes—the author of "The life of the law has not been logic: it has been experience" and "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics"—is reckless, especially in the mouth of a professed skeptic about ascriptions of causality. But my concern with accuracy lies elsewhere. Horwitz says that the three sentences mark "the revolutionary moment" at which a "paradigm shift" occurred from a theory of contract as founded on the will of the

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parties to a theory of contract as the imposition of "some policy on the parties regardless of any supposed intention" (38). Yet the sentence that precedes the three that Horwitz quotes reveals that Holmes was not making a point about the role of intent in contract law. The sentence is: "You can give any conclusion a logical form."[9] Holmes then illustrates the proposition with the example (the subject of the three sentences quoted by Horwitz) of "implying" a condition in a contract, that is, of using deduction to derive the condition, when in fact the decision to imply conditions in contracts reflects a judgment of social policy. The policy could, however, be one of enforcing contracts in accordance with the parties' intentions, so far as they can be discerned, and, in cases where those intentions cannot be discerned, in accordance with an estimate of what the parties would have agreed upon had they negotiated with reference to the point in dispute. This is clear enough with respect to the most important contract condition—that the duty of one party to perform is conditional on the other party's substantially performing *his* side of the bargain.

It is true that elsewhere in the essay Holmes emphasizes that the law does not proceed on the assumption that a contract is a literal meeting of minds—judges have no way of crawling into people's minds; they act on the basis of external signs. This is not, however, a denial that the social function of contracts and contract law is to facilitate agreement (sometimes by filling in a gap in the parties' express contract, as the court believes the gap would have been filled had the parties thought about the question at the time of negotiating the contract) rather than to tell people how to conduct their lives. It is not even a change in Holmes's thinking.[10]

There is, to be sure, a difference between an approach that seeks to determine at all costs the intent of *these* parties to *this* contract and an approach that seeks to develop rules of contract law that over the general run of cases will minimize contract transaction costs. The first has a Kantian or natural law flavor, the second a utilitarian or economic one. A court applying the second approach might refuse to enforce an unwritten contract and thus utterly disregard evidence of the parties' intentions, merely because it believed that requiring a writing would reduce the costs of erroneous determinations of contractual intent in the generality of cases. The triumph of the second approach, one indeed more congenial to Holmes though not the point of the quoted passage, might count as an important change in legal doctrine. But it was not a change in Holmes's own thought. The next step in this evolution might be an approach that sought to achieve substantively

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desirable results rather than to facilitate the process of voluntary transacting—that sought in short to jettison freedom of contract. But that was a step Holmes never took, despite Horwitz's contrary suggestion.

As evidence of the "overwhelming" influence of the three sentences, Horwitz offers two articles by the forgotten Clarence Ashley. Horwitz tells us that these articles attack freedom of contract, and among the telling quotations that he offers in support of this characterization we read: "There does not seem to be any difference . . . between the obligation of Tort and Contract . . . " (39). Beware a Horwitz bearing ellipses.[11] The missing words between "difference" and "between" are "in this respect."[12] Ashley's point is merely that, once parties express their mutual assent to be bound by a contract, the law decides the legal consequences. "In Tort the law annexes to certain actions an obligation, namely, to pay damages. In Contract the law annexes to certain other actions an obligation, namely, contract."[13] This is authentically Holmesian, but it is not revolutionary.

I may have seemed to dwell too long on a tiny part of Horwitz's book. Yet inaccuracy about the thought of the central figure in an intellectual history is a serious shortcoming in such an historical analysis.

The second major criticism of the first book—that Horwitz's ignorance of economics had led him to ascribe redistributive motives to concepts as likely to have reflected efficiency considerations—is less applicable to the second because he has become less interested in economic explanations for intellectual change. It crops up occasionally though, especially in the discussion of corporations. Horwitz subscribes uncritically to the proposition that "oligarchic" directors and officers (he uses the word repeatedly) exploit shareholders and consumers, and that states compete to offer corporate-law principles that will facilitate this exploitation—this competition being the "infamous 'race to the bottom' " (84) of which Horwitz writes in apparent ignorance of a considerable economic literature. His most serious economic error is to suppose that the use of a replacement-cost, rather than an original-cost, standard for public-utility rate making creates monopoly windfalls; in fact, competitive pricing is based on current, not sunk, costs. This is not an important error in itself but it is illustrative of something that is important: that people who don't know economics exaggerate the monopolistic and exploitative character of unregulated markets. A feeling that capitalism is a gigantic con game, that private enterprise exists mainly to rip off workers, consumers,

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and other vulnerable people, permeates the book—informs, for example, the uncritical approbation of all Progressive assaults on business—although it rarely crystallizes into a falsifiable proposition about the economic consequences of a legal doctrine.

From Economics to Psychology

I want to return to the book's main theme. In every generation (at least since 1850) conventional-minded, methodologically conservative, establishment jurists create a logical, tidy, self-contained, satisfyingly professional or "scientific" system of legal concepts from which specific outcomes can be derived deductively, thus sparing the jurist a messy encounter with reality. In fact, Horwitz contends, these concepts are shallow rationalizations, rife with internal contradiction because generated by political or psychological yearnings that have no intellectual coherence. At first the contradictions are overlooked. But eventually the tides of social change erode the flimsy conceptual structure. A few daring thinkers appear and unmask the fundamental contradictions, precipitating "a crisis of legitimacy." The crisis is resolved when the old conceptualists make peace with the insurrectionists and a new set of conceptualisms is spawned. A coherent intellectual structure is recreated—for a time. But eventually the fundamental contradictions resurface and a new crisis of legitimacy erupts. "Each generation continues frantically to hide behind unhistorical and abstract universalisms in order to deny, even to itself, its own political and moral choices" (272). To that unhistorical and abstract universalism, "liberty of contract"—which conservative turn-of-the-century judges used to invalidate restrictions on free enterprise (as in *Lochner v. New York*)—Progressives opposed the unhistorical and abstract universalism "judicial self-restraint," which later inhibited them from supporting the invalidation of public school segregation (*Brown v. Board of Education*). So the great Progressive jurist Learned Hand is found in his old age denouncing *Brown* as an affront to self-restraint. Similarly, Progressives who had trumpeted administrative discretion when wielded by the Labor Board during the New Deal were embarrassed to find administrative discretion wielded with equal vigor by McCarthyite loyalty boards after World War II, while Progressives who had plumped for balancing tests as the antidote to formalist classification games discovered to their discomfiture that the balancing metaphor was well suited to justifying restrictions on free speech. The only way

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to break the circle of sterile and reified abstraction, Horwitz believes, is by acknowledging that law is an instrument of politics rather than a self-perfecting, autonomous conceptual structure. *Lochner* was wrong because maximum hours of work are a good thing; *Brown* was right because public school segregation is a bad thing. To paraphrase Keats, that is all ye know on earth and all ye need to know, all else being mandarin obfuscation.

But if each generation, Left or Right, succumbs to the siren song of abstraction, it becomes difficult to affix a definite political sign to this vice; it is more a cognitive or psychological deficiency. So, Horwitz's analysis implies, it is in the realm of the cognitive and the psychological, rather than of the political or the social scientific, that we should look for clues to "critical" thought, the thought of Holmes and other Progressives, of Legal Realists, and today of Critical Legal Scholars (mentioned in passing in the conclusion, as the heirs of the Realists). Horwitz equivocates, however, between the old-fashioned view that ideas collapse of their own weight—Holmes abandoned freedom of contract (as Horwitz erroneously supposes him to have done) because the scales fell from his eyes—and the more interesting view that people give their assent to particular ideas because of some quirk of personal psychology. In the long footnote that ends the chapter on Holmes (142–43n). Horwitz tells us that after completing the text of that chapter, which ascribes Holmes's supposed change of mind to pragmatism's "fundamental break with theological and doctrinal modes of thought" (142), he discovered Holmes's letters to Lady Castletown, the Irish woman with whom Holmes had—or didn't have—an affair in the 1890s. There was *something* between them—no doubt about that. Holmes wrote a number of passionate love letters to her, several while he was composing "The Path of the Law." On the basis of these letters Horwitz says, "Now one must ask whether and to what extent it was the discovery of some deep—and previously unfulfilled—love that produced in Holmes what Freud called an 'oceanic' feeling, inducing him to transcend the prior categories of his thought" (143n).

Continuing in the psychological vein, Horwitz declares Jerome Frank and Karl Llewellyn the founders of Legal Realism. Frank's book *Law and the Modern Mind*, written we are told "in the midst of [Frank's] own psychoanalysis," diagnosed formalism as the product of arrested development—of a "childish longing" for "Father-as-Infallible Judge" (quoted at 177). Frank pronounced Holmes "the Completely Adult Jurist" for having outgrown that longing and thus got "rid of the need of a strict father" (178). As for Llewellyn—self-proclaimed rebel, freak,

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and nonconformist—Horwitz points to his three marriages and his alcoholism for confirmation of "this picture of a soul in conflict" (186). And he says that Llewellyn and Frank "appear to have been drawn to each other's emotional volatility, exhibitionism, and rebelliousness" (187).

Bad vs. Good Formalisms

How persuasive is all this? Horwitz is correct, I think, to perceive an abiding tension between the view of law as a set of objective, autonomous, politically disinterested concepts from which specific case outcomes can be derived by the methods of logic, and a view of law as a practical instrument of government to be evaluated by its consequences in the real world. The first view, "reified abstraction" in Horwitz's terminology, has always been dominant in legal thinking because it flatters both the legal profession's self-esteem and the human longing for certitude that pragmatists like Peirce and Holmes singled out for derision. It is not the property of a party or a school. When, some years after writing *Law and the Modern Mind*, Jerome Frank became a federal court of appeals judge, his rebelliousness drained away. Frank's judicial opinions differ from those of his colleagues mainly in being even longer and even more heavily larded with case citations—in a sense more formalistic. Llewellyn went on to write the Uniform Commercial Code and to praise state appellate judges. Both became establishment figures along with Learned Hand, Felix Frankfurter, Henry Hart, Herbert Wechsler, and the other quondam Young Turks who had chafed under the formalisms of an earlier era.

Indeed, the first generation of Critical Legal Scholars, the self-proclaimed heirs of the Legal Realists, is becoming co-opted by the legal establishment. Many of its members are comfortably ensconced in the tenured ranks of leading law schools, and perhaps a few will find positions in the new administration. And even in the flush of youth, Realists and especially the Crits had, despite the deconstructive and even anarchist noises made by the latter, to a great extent merely exchanged one set of reified abstractions—Property and Contract—for another and equally unexamined set—Equality, Liberation, Community, Revolution, and Democracy. One abstraction to which Horwitz appears to subscribe with enthusiasm is that all private action is a delegation of public power to private individuals, making the

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latter in effect public officials, so that levying a general income tax is merely cutting government salaries (163–64). When I eat a potato chip I am really eating the government's potato chip with its permission, since it is the government that created, recognizes, and protects my property right in the chip.

Horwitz fails to understand that the tension between formalism and realism is *creative*. This is connected with his hostility to science. He will have no truck with the branch of Legal Realism that sought (abortively, to be sure) to apply the methods of social science to law. For him the significance of realism is its "cognitive relativism," that is, its skepticism about established structures of thought. He even commends Jerome Frank for "bad manners" and "bad taste," viewed as a contribution to "cultural politics" (177). He loves images of destruction, "disintegration" being one of his favorite words (the Crit as wrecker). He points out that the late-nineteenth-century drive to abstraction, generalization, and systematization of legal doctrine "ultimately sowed the seeds of its own destruction" because it "simply exposed contradictions that earlier compartmentalized structures had been able successfully to suppress" (15). The word "simply" suggests that Horwitz does not understand the function of abstraction, generalization, and systematization in bringing anomalies to the surface and setting the stage for new revolutions in thought. To him, science is Platonic, and thus allied to religion. Not for him the fallibilist picture of science painted by Karl Popper, which has affinities with the pragmatism of Peirce and Dewey that might have been expected to commend it to Horwitz. Not for him the pragmatic recognition that rules and other abstractions are useful features for even a just legal system to have—that they are not *only* instruments of mystification and oppression. But Horwitz the self-declared pragmatist (271) is interested in nothing so practical as an actual legal system. He is interested only in what legal intellectuals say about the legal system.

He sheds no light on the role that deep personal maladjustments, or sudden psychological shocks such as an adulterous love affair might administer, have played in revolts against formalism. His speculation about the effect of Holmes's possible affair with Lady Castletown on the dramatic change of position announced in "The Path of the Law" founders on the absence of a dramatic change of position. There are differences in emphasis between *The Common Law* and "The Path of the Law," but they have mainly to do with the different scope and occasion of the two works and with the difference in perspective between a scholar and a judge. Horwitz claims that not until 1894 did

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Holmes come to realize that "law is the product of social struggle. Nothing stands between the state and the individual" (130). Yet more than twenty years earlier Holmes had written that

> the struggle for life . . . does not stop in the ascending scale with the monkeys, but is equally the law of human existence. . . . And this is as true in legislation as in any other form of corporate action. All that can be expected from modern improvements is that legislation should easily and quickly, yet not too quickly, modify itself in accordance with the will of the *de facto* supreme power in the community. . . . The more powerful interests must be more or less reflected in legislation; which, like every other device of man or beast, must tend in the long run to aid the survival of the fittest.[14]

The continuity of Holmes's thought is a good deal more striking than the eddies of change in it.

But if I am wrong about the continuity of Holmes's thought, I still do not accept Horwitz's psychologizing. It is irresponsibly amateur. If there is a body of psychological scholarship—or of imaginative literature—or of biography, psycho- or otherwise—that predicts that a middle-aged love affair will cause a person to throw over his whole system of thought, Horwitz ought to cite it to us. The proposition is hardly intuitive as a generalization, and Horwitz does not furnish enough details to make it plausible as an interpretation of a specific relationship between specific people.

As for Frank and Llewellyn, I grant that a psychiatrist would have a field day with those two. On the other hand their psychiatric problems seem to have little in common with Holmes's pursuit of Lady Castletown, so what is the psychological lowest common denominator that explains the convergence (as Horwitz would have it) of the thought of these three men? And if one picked a larger sample of the progressive-realist movement I doubt that one would find a higher proportion of oddballs in it than in any random cross-section of human beings. Horwitz's broader psychological generalizations, such as "the ideal of neutrality represents a form of denial: As the level of social conflict produced ever more anxiety, the yearning to believe in an idealized oasis of neutrality became correspondingly greater" (20), are merely asserted. Not only the jargon but the theme of *Law and the Modern Mind* is Freudian, and for all one knows Frank got both from his psychoanalyst; but you don't have to have a psychological problem to hold a psychological theory.

Horwitz would have been better advised to search for an explanation of the patterns of legal thought that he describes in the structure

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of the legal profession, which is something different from either the social class of its clients or the psyches of its members. The claim of a profession to monopolize an activity such as the treatment of illness or the administration of the laws is strengthened by persuading the public that the profession controls a body of cogent and difficult techniques, which in the case of law consists of logical and classificatory operations performed upon a family of concepts that the profession pretends is capable of generating exact and objective results. It is exceedingly difficult for a member of a profession to thumb his nose at the norms and practices that are the source of the profession's self-esteem and social importance. Hence the backsliding into formalism of realists such as Frank and Llewellyn.

And hence the professional elite's puzzling discomfiture, which Horwitz notes, with the decision in *Brown v. Board of Education*. The problem with *Brown* from a professional perspective was threefold. First, the facts constituting the minor premise of the decision—that segregation was harmful to blacks, whether by stamping them with a badge of inferiority, depriving them of a quality education, or denying them valuable associations with white persons, or all three, and that this stigmatization and these deprivations were the original and continuing objectives of segregation—were obvious and had been from the inception of the practice. This was embarrassing because if so palpable a form of deliberate and invidious racial discrimination had existed for more than a century, as it had, why had the Supreme Court taken so long to invalidate it? Why in particular had it upheld segregation in 1897 (*Plessy v. Ferguson*)?

Second, while the minor premise of the decision was too obvious to be congenial, the major premise was too difficult. It was unclear, to say the least, whether the framers or ratifiers of the Fourteenth Amendment had intended the equal protection clause to forbid segregated education. To decide whether their intentions should count would require tools of interpretation that the legal profession lacked in 1954. It lacks them today, so that the debate, though muted as well as moot, over the soundness of *Brown* as constitutional interpretation continues.

Third, the decision was undeniably political in consequence—it thrust the Supreme Court into the midst of a power struggle between the Southern and the Northern states, and in that sense could be thought a reprise of the *Dred Scott* decision. The professional perspective is resolutely antipolitical. It wants law for law's sake (like art for art's sake), not for politics' sake. The further the courts steer clear of

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political hot potatoes, the more likely is judicial inquiry to resemble scientific truth seeking. Physicians want to keep clear of politics too, and for the same reason.

It is not even clear that Horwitz himself can avoid the allure of formalism. I gave an example of his fondness, despite disclaimers, for abstraction. Cass Sunstein has pointed out that the book gives no hint of what a *constructive* alternative to formalism might look like.[15] The Progressives and Legal Realists are, on Horwitz's account, great debunkers. But neither they nor he have anything to put in the place of formalism except "political and moral choices" as contestable as those of the bad old boys like Lemuel Shaw. All law for Horwitz is divided into formalism and politics, with the latter viewed as an arena of power, of inarticulate struggle. The spirit of "people's justice" broods over the book: get rid of the judges and the lawyers; let the populace rule, judge, and punish. But isn't this a kind of formalism? We recall that the realists, in reaction to *Lochner*, made a shibboleth of democratic choice expressed through legislative enactments, and of expertise, enshrined in the administrative process. Uncritical belief in the wisdom of either experts or the people at large is of a piece with uncritical belief in the wisdom of legal professionals.

Populism, however, is only one possible reading of Horwitz's preferred alternative to formalism. Another is leftism. Perhaps the relevant "political and moral choices" are not those of the people but those of the judges, and what is at fault are the criteria for selecting judges, and the formalism-induced timidity that prevents "good" judges from expressing their political and moral values forthrightly in their decisions. A third possibility (call it pragmatism)—that judges would do better if they brought to their endeavors the open-mindedness, curiosity, intellectual breadth, imagination, willingness to reconsider their views in the light of new experience, and theoretical and empirical rigor and freshness characteristic of the better social and natural scientists—seems not to have occurred to Horwitz.

Subordinate to the "major"—actually, the excruciatingly minor—theme of Horwitz's book (for he has reduced a century of American legal history to an academic debate over formalism, in turn reduced to a love affair, some divorces, a bout with the demon alcohol, and a session on the couch) is a theme historically more exact, better documented, and more closely connected to the earlier book. It is the most valuable part of this one. It is the story of the struggle to adapt legal categories to changed social or economic conditions. When a new institution emerges, such as the corporation, it must be fitted into

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preexisting categories of legal analysis by a process of analogy, extension, or redefinition; and the process of adjustment may, by altering the categories, alter thinking about other institutions. At first it seemed natural to analogize the corporation to a partnership, with the shareholders as the partners. But to give shareholders the rights of partners, when really all they are or want to be (in large corporations, anyway) is passive investors, would defeat the purposes of the corporate form. A corporation is not an experiment in democracy or solidarity, but a device for raising capital. Gradually judges realized this. They began to treat the corporation as a "natural entity," much like an individual. This was more appropriate than the partnership analogy to the economic function of the modern corporation. But of course the corporation is not a natural entity. It is an artifactual entity recognized and protected by the state—endowed by the state with many of the same rights as individuals for functional, instrumental ends.

As people began to understand that the corporation, far from being a "natural" rights-bearing entity, had been given rights for instrumental ends, it occurred to them that maybe even *individuals* had been endowed by the state with rights, specifically property rights, for functional, instrumental ends, rather than born with rights. In this way the effort to give the corporation a secure legal status undermined the belief, widespread in the nineteenth century, that the right of property was a "natural," that is, a prepolitical, right, with which the state could not tamper without a compelling justication. Reactionary judges, aware of this slippery slope (at the bottom of which lies my potato-chip example), resisted "modern" ideas of the corporation—and proto-legal realists embraced those ideas for the same reason. This is the kind of story that Horwitz tells well. It illustrates the value of close-grained legal-intellectual history. It is the nucleus of permanent value in a flawed and uneven work.

NOTES

1. Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, Mass.: Harvard University Press, 1977; reprinted 1992 by Oxford University Press).
2. By the eve of the Civil War, "the law had come simply to ratify those forms of inequality that the market system produced." Ibid., 210.
3. Ibid., 266. "The paramount social condition that is necessary for legal formalism to flourish in a society is for the powerful groups in that society

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to have a great interest in disguising and suppressing the inevitably political and redistributive functions of law."

4. A. W. Brian Simpson, "The Horwitz Thesis and the History of Contracts," *University of Chicago Law Review* 46 (1979): 533–601.
5. Ibid., e.g., at 600–601.
6. Stephen F. Williams, "Transforming American Law: Doubtful Economics Makes Doubtful History," *UCLA Law Review* 25 (1978): 1187–1218; Herbert Hovenkamp, "The Economics of Legal History," *Minnesota Law Review* 67 (1983): 643, 670–89; Gary T. Schwartz, "Tort Law and the Economy in Nineteenth-Century America: A Reinterpretation," *Yale Law Journal* 90 (1981): 1717–75, esp. 1772–74; Richard A. Posner, *Economic Analysis of Law*, 4th ed. (Boston: Little, Brown and Company, 1992), 256–60.
7. Consider the following quotation from Massachusetts Chief Justice Lemuel Shaw's famous opinion (which Horwitz, n1 above, at 209, had called a "landmark" in the free-market revolution in American law) in *Farwell v. Boston & Worcester R. R., 45* Mass. (4 Met.) 49, 58 (1842): "In considering the rights and obligations arising out of particular relations, it is competent for courts of justice to regard considerations of policy and general convenience, and to draw from them such rules as will, in their practical application, best promote the safety and security of all parties concerned."
8. O. W. Holmes, "The Path of the Law," *Harvard Law Review* 10 (1897): 457, 466.
9. Ibid., 466.
10. Many years earlier he had written that the decision about what step in the performance of a contract shall be regarded as a condition to the other party's having to perform can be made "only by reference to the habits of the community and to convenience. . . . An answer cannot be obtained from any general theory. . . . The grounds of decision are purely practical, and can never be elicited from grammar or from logic. A reference to practical considerations will be found to run all through the subject" of conditions. O. W. Holmes, Jr., *The Common Law* (Boston: Little, Brown and Company, 1881), 337–38. The practical considerations to which he was referring relate to the facilitative role of contracts and of contract law in market transactions.
11. For a similar example from the first book, see Simpson, n4 above, at 591.
12. Clarence D. Ashley, "Mutual Assent in Contract," *Columbia Law Review* 1 (1903): 71, 78.
13. Ibid., 78 (footnote omitted).
14. Oliver Wendell Holmes, "The Gas-Stokers' Strike," *American Law Review* 7 (1873): 582, 583.
15. Cass R. Sunstein, "Where Politics Ends," *The New Republic,* August 3, 1992: 38–41.

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Harvey C. Mansfield

HUMAN RIGHTS IN EMERGENCIES

Rights theorists tend to take tempi pacifici *for granted, but it is precisely in emergencies that rights are most difficult to protect and most in need of protection. Two remedies are: first, to be successful in emergencies and second, to establish a free government capable of handling emergencies. These remedies play no role in the thinking of the ACLU, which has increasingly come to define the public's understanding of rights. For the ACLU, a right is not a right unless it can be carried to an extreme and used irresponsibly. A better liberal theory, with instruction from Machiavelli, will seek to combine our interest in security with our assertion of rights.*

How should we protect human rights in emergencies? In disaster and war, the rights of individuals or minorities may easily come into conflict with the rights of the majority or the public good. In such times it is especially difficult to protect everyone's rights. But then, one might reply, it is obviously just when one's rights are in danger that protection is most needed. It seems, therefore, that rights are most precarious in times of emergency when they are most needed. And on the contrary, they are safest when the weather is fair and they are the least subject to challenge.

Human rights are the means we use to defend our freedom against freedom's enemies. Moreover, we distinguish ourselves from those enemies by our devotion to human rights. Rights are both means and

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Harvey C. Mansfield, Frank G. Thomson Professor of Government, Harvard University, Cambridge, MA 02138, telephone (617) 495-3333, telefax (617) 495-0438, is the author of *Taming the Prince* (Johns Hopkins, 1993) and *America's Constitutional Soul* (Johns Hopkins, 1991).

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end for us. What, then, is the value of an instrument that fails when most needed? What is the worth of an end that collapses under pressure, so that in emergencies free states no longer seem distinct from unfree ones?

To illustrate the difficulty, Americans have only to think of two instances of their country's own conduct in wartime—the jailing of sympathizers of the South and the suspension of the right of *habeas corpus* at the start of the Civil War, and the relocation of 110,000 people of Japanese descent living in America at the beginning of World War II. The first incident caused Abraham Lincoln to ask, almost to muse, in a speech before Congress: "Is there, in all republics, this inherent, and fatal weakness? Must a government, of necessity, be too *strong* for the liberties of its own people, or too *weak* to maintain its own existence?"[1]

The second example was undoubtedly a wrong done to those who wanted to be loyal Americans. It would have been better to rely on their loyalty. But could their loyalty have been known at the relevant time, and more generally, could such an action be found unconstitutional in all circumstances? In fact, the action was not found unconstitutional by the Supreme Court in the case arising afterward.[2] It is true that the Nisei were not treated as prisoners in concentration camps, but they were taken from their homes and deprived of their freedom and much of their property. It is striking how far necessity levels the distinctions in behavior among regimes.

Perhaps the differences that remain are all the more significant, because they result from a test of the strength of a country's convictions under pressure, as distinct from inexpensive professions made before the test. (And to such professions, one can add inexpensive regrets expressed with hindsight when the danger has passed.) Nonetheless, it is small consolation to Japanese Americans that their rights were violated with greater solicitude by their own country than they would have been by an enemy. Emergencies do cause free states to violate their principles, even if they do so in the furtherance of those principles. Indeed, that is the problem we are considering: the incompetence of governments devoted to human rights to protect rights in emergencies.

Perhaps the answer is not to have emergencies. For it is in *tempi pacifici* (a Machiavellian phrase) that the difference between free and unfree countries is most obvious to all and most appreciable by free citizens. Unfree countries make a habit of emergencies. They routinely violate human rights with the excuse that a Jewish conspiracy or

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capitalist encirclement—which never seems to vanish or subside—creates a perpetual emergency. The point, then, is to find ways of relaxing the pressure of necessity and of establishing peaceful times permitting rights to be respected.

No doubt it is literally impossible to have no emergencies, but two ways of reducing their number spring to mind. One is to be successful in emergencies. Let America win the wars that permit an expression of regret, in peacetime, for the means found necessary to win them. Being successful in war is in good part luck but also requires foresight. Peaceful times tend to make free countries complacent. They forget the effort and luck needed to create such conditions. A free country needs, perhaps, to institutionalize its foresight of emergencies—a need that introduces the second way of reducing their frequency. This is to establish a free government in the first place. Free governments, in this view, should be able to handle emergencies but also, and mainly, be ordered to create and maintain a difference between emergencies and nonemergencies, between war and peace. Free governments depend on such a difference for their good conscience, their self-esteem, and their reputation. Too many violations of rights, however necessary and justified, leave a burden of sin and ill fame.

Yet when we turn to political thought in contemporary America, the distinction between peaceful times and emergencies plays almost no role in the discussion of human rights. Consider first the attitude of the American Civil Liberties Union, an organization that became an issue in the 1988 presidential campaign when the Republican candidate attacked his opponent for having boasted that he was a card-carrying member. The attack was more successful than instructive because it was confined to ACLU policies and did not define any principle. The ACLU's principle is that no right is safe unless it can be carried to an extreme. Any least limitation on a right weakens it and invites its abolition by government at the urging of prejudiced citizens. A prohibition of child pornography, for example, immediately subtracts from free speech and will eventually undermine it as a whole.

To the accusation that its policies favor extremism of the Left (which they do), the ACLU typically responds that it has defended, and will defend, extremists of the Right (which it has done). That response is not only the hallmark of the ACLU but also the reaction of many who would not agree with all ACLU policies yet do (inconsistently) accept its principle. But the ACLU principle of generalized extremism is not neutral; it forms an attitude. Generalized extremism teaches toleration of the extremes and indirectly encourages partisanship for extremes by

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removing inhibitions from, as well as legal barriers to, dangerous self-expression. The extreme exercise of a right comes to be the only true exercise because the best test of devotion to a principle is thought to occur at its furthest reach. In consequence, the ACLU, while generally regarded as a fringe group, has also become the semiofficial guardian of civil liberties in America. Its own status illustrates the tendency of its doctrine.

Thus to the ACLU, rights are always in peril. They are endangered by the desire to practice moderation in exercising them—precisely by the peaceful times in which rights seem to be most secure. The purpose of the ACLU, then, is to create a sense of emergency about rights wherever people seem complacent. Many people outside the ACLU endorse the purpose, thinking it useful to have a vigorous, even an overzealous organization to keep vigil over rights. They believe that the freest countries need to be held to the strictest standards, which they interpret to be the most extreme standards.

Such half-way supporters, like the ACLU itself, take for granted the moderation they believe to be inherent in a democratic people. But it cannot be assumed that moderation will continue when all intellectuals oppose it because they confuse it with apathy. The peace on which the security of rights depends must be *nourished*, rather than taken for granted, with the teaching of moderation in the exercise of rights. For others' rights will not be respected unless those people can be considered respectable as persons. Those who lack moderation in their behavior will be distrusted and not considered respectable. One can talk about respecting others' rights as if there were no difficulty in it, but in fact, it is difficult to respect the rights of people whom one does not respect. As the concern over "political correctness" makes us aware, liberals feel the difficulty of respecting everyone regardless of faults as much as conservatives. Toleration will never succeed if it must be kept from being "judgmental," because it is not possible for a human being to live without praising and blaming others of his kind. Certainly one cannot "care" for others without caring about what they do or say—without judging them. Nonjudgmental is inhuman.

Although the attempt to avoid judgment will fail, this does not mean that moderation will automatically be reinstated in its place. More likely, toleration of extremism unaccompanied by disapproval will lead to approval of extremism, even to participation in it. Anyone who doubts this tendency has only to make a quick survey of popular culture in America in the last half century for its depiction of sex and violence, to convince himself of it. Extremism is not tolerant; and

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when it becomes respectable, so does intolerance. We must be careful to tolerate extremism without giving way to it, and therefore not tolerate it for its own sake, as if extremists were heroes. Extremists should be tolerated *despite* their extremism and for the advantage of moderate citizens. Moderates do not want to live in a society where moderation is enforced in a manner that takes away all the merit of moderation as a voluntary virtue, and by government that is harsh and overbearing. Toleration is mainly for the sake of those who make a good use of liberty, and only incidentally for those who would be intolerant if they could. Any tolerant society must by definition maintain a distinction between things most people disapprove of and things disallowed and illegal; but precisely to do this, it must at the same time sustain the distinction between what it tolerates and what it approves of.

Toleration for extremism as such nurtures a sense of irresponsibility concerning the safety and moral character of a democratic people because it is felt that any judgment of their inadequacy will lead to infringements upon rights. One must pretend that nothing can be wrong in the world which might justify a beckoning finger from Uncle Sam. Thus, all prudent provision for a real emergency suffers. The ACLU opposes military conscription as unconstitutional under any circumstances "at least in the absence of an extreme national emergency as defined by ACLU."[3] How ridiculous! The ACLU tries to create emergencies where they do not exist and to minimize them where they do.

In contemporary Anglo-American philosophy, we do not find quite the same obliviousness to the issue of human rights in emergencies, but rather an incapacity to deal with it. The main academic debate is between the rights-based or "deontological" party and the utilitarian or "teleological" party. The deontological liberals demand that rights be seen as trumps; anyone can enforce his individual rights against the majority or the common good, even in time of emergency. The utilitarians do leave room for emergencies because they allow the rights of individuals and minorities to be overridden by the utility—or rather, the perceived utility—of a majority. But they do not as a rule discuss emergencies, and they cover over urgency with the concept of preference, as if being in an emergency were the same as an ordinary case of scarcity. (They both pinch.) The result is that the extreme case disappears into routine. Whereas the deontologists endorse insistent foot-stamping, making every frustration into an emergency, the utilitarians take a cool economistic view, wondering what's the rush. Both parties

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are liberal in the Lockean sense that includes both liberals and conservatives today, but each party fastens on one aspect of that liberalism and slights the other.

The "rights-based" liberals do not know any justifiable method of limiting or moderating rights. The utilitarian liberals know how to limit rights, but not as rights, only as interests or utility. The arguments they use for limiting rights would also serve to deny them altogether. Neither tendency is normally carried to its extreme, and both are often found together, unreconciled, even in the elaborations of philosophy professors. Citizens are left to conclude either that no emergency can occur justifying the limitation of a right or that no right can exist justifying a check on the majority. The philosophers intend to defend liberalism and to give useful advice to citizens. But they end up exposing liberalism as an arbitrary combination of two heterogeneous elements—a right to assert oneself and an interest in security. They share the citizens' desire to have both together, but they cannot satisfy the desire in good conscience with convincing reasons.

I believe that the best approach to the question of rights in emergencies is political or constitutional rather than philosophical. This approach is to be found in the liberal constitutionalism of Locke and Montesquieu. If one looks to the politics of rights under their instruction, one sees that a dichotomy between rights presupposing peaceful times, and interests in surmounting emergencies, was deliberately intended. Philosophers today who plump for one element or the other without considering the need for the interaction of both are merely playing roles intended for partisans within the larger whole, of which they, as partisans, are unaware. Original liberalism thereby placed the problem of reconciling rights with emergencies in the hands of citizens, leaving it to their prudence and consent. If they had wanted later philosophers to decide the matter—for example, in a theory of justice—they might not have taken such pains to ensure that the problem have no determinate solution ascertainable in theory. While offering liberty to philosophers and intellectuals, Locke and Montesquieu did not wish to deliver free societies to their rule or tutelage. They preferred to establish free government by citizens and their representatives. To understand the strategy of the original liberals, even in the merest sketch I propose here, one must contrast it to preceding thought that does not base politics on rights.

The ancient philosophers did not order political institutions with a view to avoiding or surmounting emergencies. They planned for the best circumstances because by and large, they did not want to antici-

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pate the worst by compromising the best. When emergencies arose, as surely they would, the ancients relied on the virtue of rulers rather than on institutions, since a noble soul is useful in the worst circumstances without sacrifice of any of its nobility. Thus the ancients did not have a regular emergency power for government such as the executive, which was devised by modern thinkers. The one exception, the Roman dictatorship, came out of actual politics rather than theory. The Roman political writers—Cicero, Livy, Dionysius of Halicarnassus—treated the dictatorship with embarrassment and disfavor. It was only modern political writers, such as Machiavelli, Bodin, Rousseau, and Marx, who hailed it as a useful invention and brought it into modern politics with a much-enhanced reputation.[4] The ancients presupposed peaceful times as the condition of their politics, fully aware of its fragility but serenely determined to presume for the best.

That presumption was not satisfactory to Machiavelli. When expressed in the Christian doctrine of divine providence bringing peace on earth, the ancients' presumption made men both weak and cruel. It taught them to despise honor in this world, and it encouraged acts of pious cruelty. Rather than presume upon peaceful times, Machiavelli proposed to create them—and to do so by reversing the presumption. Instead of order in nature, one should presuppose disorder; so political order, far from deliberately ignoring emergencies, will henceforth be generated precisely out of a situation of emergency. In the new presumption Machiavelli was followed by the liberal theorists of rights who, in their constitutional morality, seem otherwise so far removed from his devilish counsel.

How does Machiavelli plan to create peace out of emergency? The answer is illuminating because his reasoning is so contrary to the usual argument of liberal theory today, based on the social contract theorists, that the government creates the benefits of peace for citizens in return for their promise to obey. Rather than being a rational exchange between citizens and government, peace results from a *sacrifice* of benefits according to Machiavelli. His explanation can be found in brief compass in chapters nine and ten of *The Prince*.

Machiavelli begins with the observation that the government, or prince, cannot trust promises of obedience made in quiet times to be kept in uncertain times. Everyone is ready to die for you, he says, when death is at a distance; but in adverse times, few actually come forward. So, we conclude, the liberal theory of obligation is a bad bargain for the government. In emergencies, the people will want to

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renegotiate the contract. Hence, Machiavelli does not take an abstract view of peace, as if, on the social contract model, peace were the result of a promise to obey any government meeting certain general conditions. For him, peace belongs to a particular government—to a prince. It must be shown to work to his advantage first, and only afterward, as a by-product of his gain, will *his* peace benefit his citizens (or subjects).

Machiavelli imagines the emergency of a prince whose city is under siege. In such a case, will not the people become restive as they watch their possessions outside the city walls being looted and burned? Machiavelli replies that the prince should remain calm: the people have already lost their possessions, and there is no more remedy for it. What is more, they have been ruined *in his defense*; and "the nature of men is to be obligated as much by benefits they give as by benefits they receive."[5] Indeed, Machiavelli's argument shows that they are *more* obligated by their sacrifices, which commit them, than by benefits received, for which they may be too busy to offer due gratitude. The psychology is that of the labor theory of value: you regard something as your property (that is, you are obligated to your government) because you worked for it, not because it benefits you. Another example: parents love children more than children love parents because parents make sacrifices and children receive benefits. And still another application, very relevant to Machiavelli's point, might show that this reasoning is responsible for the power of religion. For men are bound to God, in Machiavelli's view, more by their sacrifices than by His benefits.

Thus Machiavelli shows the prince how to make his peace by manipulating an emergency—perhaps even by creating an emergency in order to manipulate it. But he remarks that, to avoid being hated, the prince must abstain from the property and the women of his subjects.[6] The liberal theorists take Machiavelli's counsel of prudence to the prince and transform it into natural rights for all. They take his imaginary example of a city besieged—a single emergency—and translate it into the state of nature—a universal, abstract emergency. That abstract emergency becomes the extreme case that is normative for all ordinary situations. And they also generalize from his notion of obligation to a particular prince, to the legitimacy of an impersonal state.

But what was wrong with Machiavelli's solution? Perhaps he rightly appreciated the power of sacrifice in comparison with benefit or interest in human obligation. But he left obligation, and therefore

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peace, in a precarious state because, in showing one prince how to take advantage of an emergency, he necessarily endorsed the ambition of any other prince to use the same method to upset the first. Locke conceived that the power of sacrifice might be retained in the right of consent, if consent is correctly understood. The people's right to consent to government must be seen not only as the calculation of benefits to be received but also as the expression of a desire to have things one's own way. The latter element in consent results in a commitment, or a sense of having adopted the government as one's own, which is not produced by a cool reckoning of where one's interest may lie at the moment. The commitment comes from a democratic sense of honor, perhaps aristocratic in origin, that is capable of overriding one's interest in an emergency, in not keeping one's word.

In the two heterogeneous elements of honor and interest we recognize the deontological and utilitarian parties of Anglo-American philosophy. But Locke does not choose one of them or attempt to understand both in the terms of one. He keeps both, connected but separate, so that one can check the other. Our sense of honor is needed to give stability to our changeable interests, and our calculation of interest is needed to cool the angry excesses of outraged honor.

Both honor and interest may be seen in the constitution that enables men to escape the great inconveniences of Locke's state of nature. The constitution serves our interests when it preserves our lives and property; that is its end. But the constitution upholds our honor through the very act of constituting—its formal aspect. A rational constitution serving men's interests but not allowing them to fulfill their sense of honor in the act of consent, such as one conceived by our public choice theorists, would do only half the job.[7]

Locke's constitution gives birth to civil rights as distinguished from natural rights. Natural rights, or rights in the state of nature, are unlimited but insecure; civil rights, created by consent to a constitution, are limited but more secure. The greater security of civil rights is due not only to the fact that they are enforceable by the police and judges, but also to their limitations' having been freely accepted. The rights a free people consent to are worthy of respect as well as sanctioned through fear. They reflect a spirit of moderation as well as a calculation. Hence it is not only presuming upon peaceful times but also morally wrong for the deontological liberals to demand civil rights with the force of natural rights. To insist on one's right as a trump card is to ignore the deliberation that goes into constituting a society and legislating for it. Such deliberation lends dignity to beings

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with the capacity to provide for themselves, and not merely react to the pressure of necessity in emergencies.

Two other aspects of Locke's constitution, relevant to emergencies, may be mentioned. Government's protection of property enables owners to enjoy their possessions, but it also gives them an early warning of tyranny, when property is taken without consent. Thus they can see an emergency before it arrives and repel it before they are compelled to make hard choices and great sacrifices in defense of their lives. The central importance of property in Locke's scheme promotes moderate liberty as well as the self-interest of the bourgeoisie.[8] Second, the separate powers in the constitution represent its form and end: the form in the supremacy of the legislative power, the end in the discretionary prerogative of the executive (along with the federative) power. In making a law, men deliberate and will while presuming upon the possibility of human choice, but in executing a law, men must look not only to the intent of the legislature but also to emergency necessities that may arise and compel them, on occasion, to act for the public good even against the law.

A last word on Montesquieu. Montesquieu put little faith in the capacity of men to make a constitution. It is much better to "find" an existing constitution like the English than to try to "seek" one through abstract reasoning.[9] And he objected to the emergency power in Locke's constitution. A power that both executes the laws and punishes individuals makes government terrible and leaves the people feeling insecure, even when they are really safe. An independent judiciary will lessen their fear, especially by the use of juries, in which citizens are punished by their peers. Less reliance on the people's fear of government makes possible greater attention to their opinions. Free government must do its best to appear mild, particularly in permitting free speech. Paradoxically, however, a free people is likely to use its freedom to imagine false terrors. But, Montesquieu comments, false terrors contribute to avoiding true perils.

Or do they add to the perils? A people's levity has its dangers, as does their passivity. They, or their spokesmen in the ACLU, may cry "wolf" too often before the real wolf comes. The mistake seems to arise not from too much free speech, but from not taking it seriously. We should be wary of a justification for human rights that does not confer on citizens the duty of exercising them responsibly.

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NOTES

1. Abraham Lincoln, speech of July 4, 1861, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln* (New Brunswick, N.J.: Rutgers University Press, 1953), vol. 4, 426.
2. *Korematsu v. U.S.*, 323 U.S. 214 (1944).
3. Policy 120 of the ACLU's *Policy Guides*, 1986.
4. Harvey C. Mansfield, *Taming the Prince* (New York: Free Press, 1989), 82–85, 143–44.
5. Machiavelli, *The Prince*, ch. 10.
6. Ibid., chs. 17, 19.
7. Mansfield, ch. 8.
8. Harvey C. Mansfield, "On the Political Character of Property in Locke," in A. Kontos, ed., *Powers, Possessions and Freedom: Essays in Honour of C. B. Macpherson* (Toronto: University of Toronto Press, 1979), 23–38.
9. For the distinction between "finding" and "seeking" political liberty in a constitution, see Montesquieu, *De l'Esprit des Lois*, XI 5.

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Shlomit C. Schuster

PHILOSOPHY AS IF IT MATTERS: THE PRACTICE OF PHILOSOPHICAL COUNSELING

At the close of this psychotherapeutic century, an alternative to psychotherapy has begun to emerge: the use of philosophy as guidance in order to ameliorate everyday life situations. This new approach to so-called psychological problems, consisting of various forms of open-ended dialogue and reflection on life, may prevent or resolve many of the "illnesses" for which people seek psychiatric or psychological treatment. If successful, philosophical counseling would mark not only a radical shift in the direction of psychological care, but a radical return to the original, practical purposes of philosophy.

Gerd Achenbach writes in *Philosophische Praxis* that "the concrete image of philosophy is the philosopher, and the philosopher, as philosophy institutionalized in one particular form, is the philosophical practice."[1] In this way he abstractly describes the philosophical care of the self. But its concrete meaning can only be envisioned through a detailed description of how philosophical counseling functions.

Achenbach began his philosophical practice in 1981 by receiving "visitors" for philosophical conversations in his consultation office. There are many differences between these encounters and psychological or

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Shlomit C. Schuster, Rechov Tchernichovsky 68, entrance A (1), Rasko, 92585 Jerusalem, telephone 02-781378, is a doctoral candidate in philosophy at the Hebrew University of Jerusalem. She thanks Jeffrey Friedman for editorial assistance and is grateful for permission from the publishers to reproduce some paragraphs on Achenbach and Hoogendijk appearing in Shlomit C. Schuster, "Philosophical Counselling," *Journal of Applied Philosophy* 8, no. 2 (October 1991): 219-23.

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religious consultation practices. First, the practitioner is an academically trained philosopher, discussing with a visitor or counselee—not a patient—questions or problems. Second, the visitor's problematic situation is approached as a problem in which the practitioner shares empathetically. Only when philosophical practitioners make a question or problem their own can they truly come to understand it. (This is true in understanding the writings of philosophers as well as the difficulties of counselees.) In philosophical practice, empathetic understanding replaces the medical method of diagnosing people's hardships and choices. Free philosophical enquiry grounded in empathy is a way to reach new insights into oneself or life in general.

Socrates, as known through Xenophon and Plato, assisted the young and old in reflecting on their way of life. Discussing people's questions and problems produced self-sufficiency in Socrates' "clientele"; a "being-carried-off" by the unexamined life was altered into a free man's "going." Socrates guided the young in the art of living by giving meaning to the burden of life. Correct understanding made the difficult life bearable.

This coming into a new life or "coming-to-birth" through philosophizing is encouraged by Achenbach; outside the practice, as in Athens, "coming to new understandings" is usually repressed. In daily life, thinking about dark or complex issues, or even thinking at all, is frowned upon. Whenever people are discouraged from thinking profoundly about philosophical issues that confront them in life, philosophy becomes a fearsome activity. Consequently, when people are troubled with such existential questions as the meaning of suffering, being, death, or evil, they either repress the questions or they go to see a psychotherapist. Generally, mental-health workers abort the exploration of these issues, explaining that they are symptoms or rationalizations of the emotional mess the patient is in. Other ways out of the dangers of thinking are to immerse oneself in the material pleasures of life or the demands of work, or to lose oneself in addiction or ideology; all this to forget "depressing" subjects.

Rather than contributing to the modern suppression of authentic human questions, Achenbach encourages his visitors to give birth to philosophical insights into the problematic and complex issues of life. Socrates as "midwife" and as "philosophical practitioner" are themes that constantly recur in the literature of philosophical practice. The characteristics of a good philosophical midwife or practitioner are brought out by Ekkehard Martens, who emphasizes that the three sources of information about Socrates—Xenophon, Plato, and Aris-

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tophanes' caricature in *The Clouds*—produce three different images of Socrates: the sophist, the moralist, and the skeptic.[2] Only an amalgam of these three images could, according to Martens, form the ideal paradigm of the philosophical practitioner today.

If the concrete instantiation of philosophy is the philosopher, philosophical practice instantiates hermeneutics. Sloterdijk, in dialogue with Achenbach, describes Socrates as practicing a "hermeneutics of burdensome life."[3] For Achenbach, hermeneutics or interpretation is not the discovery of underlying truths (*Unterlegen*) behind communication. In philosophical practice, there is a dialectical process (*Auslegen*) in which the practitioner becomes united with the problem, not by imparting his own understanding of it, but by giving the visitor a fresh self-explicatory impulse. Hermeneutics happens. This is in contradistinction to most psychotherapists and "pretense" philosophers—these are accused by Achenbach "of creating additional realities, 'second' illusive realities"—who interpret questions, complaints, or problems exclusively in terms of a specific theory, such as Freud's sexual-dynamic interpretation of the psyche. Achenbach designates his type of hermeneutics as *hermeneutische Eros*, which I translate as the "erotics of understanding," in analogy to Susan Sontag's conception of an "erotics of art."[4] Much of Sontag's criticism, in *Against Interpretation*, of art criticism in "our hermeneutical age" matches Achenbach's criticism of interpretation in the human sciences and humanities. Sontag writes:

> The effusion of interpretations of art [cf. pretense philosophy] today poisons our sensibilities. . . . To interpret is to impoverish, to deplete the world—in order to set up a shadow world of 'meanings' [cf. "second" reality]. . . . Our task is to cut back content so that we can see the thing at all [cf. the return to *die Sachen selbst*, i.e. a direct, fresh understanding of people's concerns].[5]

A much-discussed aspect of Achenbach's practice is that it is "beyond method." In answer to the puzzled methodologists, Achenbach drafted a "protocol for a conversation."[6] This ironic and witty article, entitled "Scheherazade, Philosophical Practitioner," makes it clear that reflections of the "self" in and through narration will have radical effects. The philosophical practitioner of *A Thousand and One Nights* mirrors the king's homicidal compulsions in her fairy tales. Scheherazade's "method" changes every night. Her pluralistic interpretations of life motivate the king to conquer his murderous passions. Achenbach's claim that philosophical practice is at the same time psychoanalysis and the critique of psychotherapy and psychoanalysis is

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not mere irony. In Achenbach's practice, Freud's exclusive sexual-dynamic interpretation of people is turned into and superseded by an open-ended self-explanation and -understanding, in the setting of the dialectical relation between practitioner and counselee.

Achenbach's visitors are people in a variety of conditions. Usually they have ordinary problems and questions, but sometimes they are post-therapy or on the borderline of "normality." This last group often finds, through Achenbach's practice, a philosophical equilibrium. The aim of philosophical practice is not the healing of visitors, but for them to come to a satisfactory self-explanation and -clarification. Nevertheless, authentic dialogue and self-narration can have therapeutic effects. Generally the visitors helped through philosophical talks have not previously thought about and talked through the crucial events of their lives. These events remain "undigested" and need to be integrated through the empathetic questioning of the reasons for, meanings of, and phenomenology of these events. Achenbach finds that most visitors have more than one or two questions or problems; but it is often unclear to a counselee what the problems are. Philosophical analysis then, has to involve self-analysis.

There is no set time limit in which a philosophy of life is worked out. Sessions can take place one or more times a week. The sessions become especially interesting and fruitful when carried on for a few years, though a few consultation hours can be effective too. Generally, once pressing problems and questions are talked through, addressing the "permanent burden of life" begins.

A journal for philosophical practice, *Agora*, informs its readers of new developments and literature in this field. The Institut fur philosophischen Praxis und Beratung, founded by Achenbach in 1982, numbered more than 110 members by early 1992, including a considerable number of scholars in various academic disciplines. The interdisciplinary interest in Achenbach is evidence against the unfortunate idea that philosophical practice is an anti-academic "New Age" alternative healing practice. That Achenbach is apprehensive of being categorized as a part of the popular "healing" and "guru" culture can be concluded from his negative description of this modern sensibility in "Oedipus Bewitched."[7] The essential argument here is that thought has to return to itself as self-criticism. It was Schopenhauer who recognized in the pre-Freudian image of Oedipus the critical image of the philosopher: "Those who have the courage not to leave any question hidden have the power to philosophize."[8] The bewitched Oedipus is the person who does not question, and without doubts accepts the dicta of spe-

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cialists, traditions, religion, science, and pseudo-science (astrology, palmistry, and so forth). Critical thinking—as Achenbach conceives of it—would make the conceptual world of all these "knowers" much more interesting, and could generate a self-correcting impulse.

Dill's Antiphilosophical Practice

In July 1990 there appeared a book under the title *Philosophische Praxis* by Alexander Dill.[9] Dill, an occupational therapist and sociologist, started his philosophical practice in Berlin in 1984. Dill's practice is "anti-Socratic" in that it rejects as an instrument of power the logical verification of thought. In Dill's view, Socratic dialogue is not an authentic dialogue because Socrates insisted on getting particular answers to particular questions. Instead of a logical philosophical investigation, Dill offers a strategy of thinking while trying not to think, the aim being to arrive at the silence belonging to those who know. Dill's philosophical practice can be interpreted as "a therapy for the search for truth," as a cure for philosophy. Zen masters are dominant images in Dill's practice. The question "What is philosophical practice?" he wants to answer in the mode of Wei-Kuan. When the sage was asked "What is Zen?" his reply was, "Something like a beautiful mountain." Dill compares his practice to a revolving door placed in an open field. Few who travel past it notice it. Generally, these observant few do not consider it a necessary item. Only curious travelers, or those who like to play, enter Dr. Dill's revolving door. In Dill's view, "to question why" obscures thinking, while following the stream of thought without these interruptions leads to the end of thought. Not Socrates, but children, teach authentic philosophical discourse. The child asks not only because she wants to know; the child also asks because she wants to do away with knowledge. Especially, the child wants to destroy that knowledge which has become an instrument of repression in the hands of the grown-ups. In an authentic dialogue, the dialogue partners want to say something; they are not particularly looking for any answers.

The basic intentions of Dill's practice are paradoxical, the negation of negations. The notions of self, self-realization, and self-definition are considered by Dill to be facets of the Western cult of identity. Dill considers the ancient Chinese and mystical understanding, "it is better not to be a self," as having pragmatic consequences for modern people. Lao-Tse showed the self—the I, the person—to be an imaginary entity

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which becomes a source of evil. If there is "no person," there is no one to experience evil. According to Dill, this imaginary view of the self has parallels with avant-garde and poststructuralist ambitions of overcoming the subject. He quotes Gilles Deleuze in his quest for inner pluralism. People, in themselves, should not be one or many, but manifold. Such paradoxical self-distance is justified and functional, according to Dill.

In contrast to most chapters of Dill's book, "Political Existence: The Political Animal" is surprisingly commonsensical: Kant's practical reason teaches us how to be good citizens. After being immersed in Dill's mystique, one wonders if this sudden logical turn to reason is a last chance to escape an ominous future.

Dill's book brought forth considerable criticism from members of the Society for Philosophical Practice, founded by Achenbach.[10] For example, Martens sees Dill's philosophical practice as devoid of philosophy. I regard Dill's practice as giving expression to Kantian, existentialist, poststructuralist, and mystical philosophical ideas. Dill's motivation for his practice is his "love of talking," and thus he keeps the philosophical discourse going—approximating Richard Rorty. This type of discourse is interesting from a theoretical perspective, but not from a practical standpoint. Even Dill himself finds his practice aimless. It has no significance for the activities of daily life, other than political life. Life goes on without philosophy, and without its practice.

Hoogendijk's Philosophical Practice

After one year of practice, in 1988, Ad Hoogendijk published a book on philosophical practice entitled *Consultation Hour with a Philosopher*. My description of his practice is primarily based on this and a more recent book by Hoogendijk, and on interviews with him in 1987, 1989, and 1992.

Hoogendijk distinguishes between philosophism—the knowledge of philosophy—and philosophy. In philosophical practice one is not concerned so much with philosophism as with philosophical skills and attitudes. One philosophical attitude is "relaxed concentration," a free, unbiased, and detached listening-in-depth. Openness is crucial. Hoogendijk relates openness to love. Until the Renaissance, love was a condition for knowing reality; since the Enlightenment such a prerequisite is to be found only in a few minor philosophies. Another philo-

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sophical attitude is fascination. Fascination begins where the self-evidence of a situation is taken away. Through fascination, breaches are continuously made in the closed circle of self-evidence. The philosophical practitioner who sees fascination as the origin, the foundation, the inner and perpetual motive of philosophy, will thereby experience each philosophical consultation hour as unique. The practitioner has to find out which type of conversation (combination of discourses) is best for each visitor. A conversation can have the qualities of the Socratic maieutic to make the other conscious of thinking habits, as well as helping to evaluate critically the counselee's conceptions. A conversation can also have a dialectical style: one argues in favor of one point of view and against another. Eventually new conceptions are achieved by each of the debating sides. In a Buberian dialogue, the practitioner has to step out of his own mental world. Through a relaxed concentration on the other, and the "active inclusion" of the other—without losing oneself in the other—the other becomes known to the counselor. Nonetheless, the counselee remains a perpetual mystery. Buber's philosophy of dialogue, and its addressing of the other as "Other," restores the other to authentic selfhood.[11] To Buber all authentic living means encounter, dialogue—which in turn involves healing.

Hoogendijk considers the following characteristics essential for a philosophical practitioner: a critical capacity, an awareness of cognitive blind spots—collective as well as personal—and an ability to discover prejudice. Often prejudice is the basis for arguments. It can also take the form of "scientific" theories or scientific myths. The philosophical practitioner does not want to conceal reality with interpretations based on preconceived notions of "reality." He wants to clarify the "truth" through an openness which can be attained through honest self-knowledge and love.

The method Hoogendijk uses in his practice is presented as follows:[12] In the first instance he asks questions from various perspectives. Clarification of a problem or question may cause the original issue to acquire new dimensions or to be interpreted differently. Hoogendijk pays special attention to presuppositions, attitudes, and ideas that are taken for granted by the visitor. He tries to be sensitive to irrational, uncritical, and culture-bound thinking. Hoogendijk often finds that inconsistencies in visitors' "philosophical dimension" (presuppositions, views, self-image, and so on) cause them problems. Such inconsistencies are worked out thematically. Part of this thematizing consists of conceptual analysis. For instance, what does a

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concept like *freedom* mean to various people? Thematizing may make situations more problematic, which can upset the visitor. On the other hand, the practitioner's philosophical attitude and skills may be absorbed during the conversations, restoring the visitor's emotional stability and even serving as a source of tranquility. His study of philosophy taught Hoogendijk that there are no certainties. Often his visitors' anxieties are caused by uncertainties. Hoogendijk's questioning about how they think about the relation between Being and Becoming, he claims, can create a new openness and calm.

People are attracted to Hoogendijk's practice by concrete situations with philosophical implications, such as: Should I finish my education? What should I do next? Has my life been wasted? Is it all right to divorce? Am I the only egoistic person or are all people like that? Is life after death a possibility? What is reality?

I had been puzzled by the naive, optimistic faith these practitioners have in the practice of philosophy. When I met Hoogendijk in 1987, I wanted to find out what gave him and his peers this confidence in their approach. Rather than founding their praxis in a metaphysics or ontology, they base their philosophical "faith" on experience. Hoogendijk claims that philosophy is a considerable help in his personal existence. It was through philosophy, he says, that he became a human being. Dries Boele—now a philosophical practitioner himself—similarly claims that as a visitor in a philosophical practice, he gained new insights from the critical questions and remarks of the practitioner, leading him to awareness of a dilemma based on several inconsistencies in his "philosophical dimension." "On one side, there was in me the pedantic will to control my life and to organize it as I wanted; on the other side there was the longing to learn to live with a trust in the wisdom of life itself. The explicit knowledge of this contrast in my personality was an important influence in my further self-realization."[13]

Hoogendijk related to me the view that philosophical practice is a "way of life," not a dogma. It is possible to compare philosophical practice to wisdom philosophies (such as those of the Stoics, Montaigne, and Ludwig Klages). Hoogendijk's book includes a chapter on "Wisdom of Life," in which he writes that Zanussi's film, *Imperative*, is an illustrative example of a tragic search for modern wisdom:

> Zanussi's beautiful movie shows the philosophical lacunae in our society: unfamiliarity with the philosophical inheritance, and above all an inability to be fascinated and a lack of philosophical openness. To what extent is there a

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> taboo on philosophical questions? A philosophical question seems out of place in our society.[14]

Nevertheless, there are chances to obtain wisdom, when life experience creates a longing for it and motivates people to a philosophical search. For example, a person encountering sexist or racist discrimination comes to question what discrimination is, what causes it, what it means, what it aims for, whether to justify or condemn it. Such an intellectual search will guide the questioning person into philosophic domains, where he may find or create a "wisdom of life." Hoogendijk is skeptical of the assumption made by Aristotle, Augustine, and more recently Bertrand Russell, that living life wisely brings happiness. However, he does not doubt the necessity of a philosophical search for wisdom as the foundation of a stable existence.

Hoogendijk regrets that philosophical counselors are so often compared to psychotherapists. The "pathology metaphor," the description and labeling of oneself, others, or situations as sick and in need of therapy is, he argues, wishful thinking. Medicine, like magic and religion in other ages, purports to be able to cure almost any sickness. In short, to be "ill" brings hope; for every sickness there is a painkiller, a therapy or a medicine. What is seen as sin, misery, disease, maladjustment, abnormality, an existential condition, or a problem, depends on whether it is described by a theologian, a medical doctor, a psychiatrist, a sociologist, or a philosopher. Philosophical practice is not an alternative therapy, but an alternative to therapy, or a supplement to psychotherapy, which in turn supplements it. As well, it can prevent psychological problems. Hoogendijk accepts that psychotherapy may effect changes in a patient's "philosophical dimension," but that this effect would be positive is, one might think, unlikely. Psychotherapeutic awareness drastically deprives problems of their social, political, economic, historical, and philosophical contexts and roots. When problems stem not from the "emotional development" of client but from objective situations and cultural contexts, psychotherapeutic awareness tends to preclude the possibility of facing the actual causes of distress and discontent.

Hoogendijk's second book, *Philosophy for Managers*,[15] was inspired by an increasing number of clients with problems connected to their work: problems in career planning, changes of profession, conflicts or stress at work, the need for reflection on leadership and management, or unemployment. In 1990, Hoogendijk changed his field of interest

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from private counseling to counseling within companies and organizations.

What is fresh in Hoogendijk's treatment of this area is that he now places his philosophical practice in a postmodernist frame. He views the modern and the postmodern as contrasting ways of thinking and being. Various twentieth-century phenomena, including secularization, the welfare state, the Holocaust, the end of ideologies, the growth of higher education, "unlimited" communication and transportation options, and a multicultural society, have led in his view to a widespread relativism and a shift of morality and culture from the public to the private domain.

Though Hoogendijk appreciates postmodernism, he also recognizes that it is problematic when it leads to absolute relativism, apathy, and disorientation. Nevertheless, a reflective form of postmodernism (perhaps a modernist postmodernism?) can prevent chaos and totalitarianism from engulfing us. Philosophical practice is designed to invite and encourage such reflection. It produces flexibility in thinking and action, resulting in openness and cooperation among people and organizations. It enables people—especially those who have to take on heavy responsibilities in their work—to modify or adapt their value systems. Hoogendijk views descriptive business ethics as a means to establish reasonable and responsible relations among management, personnel, clientele, society, and environment.

Reflection on the meaning of labor and its history—primarily based on Hannah Arendt's *The Human Condition* and the writings of Hans Achterhuis[16]—reveals labor as one of the major domains of a person's life. Hoogendijk asks three questions about this domain: "Who am I? What can I do? What do I want?" This leads him to the idea of life-design. Discussing the possibilities of realizing a person's desires and dreams for the future can bring clarity to them and may cause changes in self-image, mood, and communication skills. In the context of labor, these newly arrived-at data, discussed philosophically, can assist managers and employees in deriving meaning from and motivation for their work.

Socratic Group Dynamics

With the growing popularity of individual philosophical consultation, another form of philosophical practice, which originated with Leonard Nelson[17] and dates back to the Germany of the early 1920s, has

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gained interest in the Netherlands through lectures and seminars organized by Jos Kessels and Gert de Boer. Philosophical group discussions called "Socratic Discourses" are organized by these two philosophers at universities and recreation centers.

The following description of a Socratic Week in Willebadessen, Germany, organized by Gustav Heckmann, a follower of Nelson, serves to give the reader a notion of how Socratic Discourse is actualized. According to de Boer,[18] Socratic Weeks are organized about three times a year in Germany. About forty participants, of various ages and educational levels—though most are students and academics—meet to discuss during one week, three times daily, philosophical and mathematical subjects. The participants are divided into four "Socratic groups." Each group chooses a discussion subject. The philosophical subjects chosen include power and violence; to live in the truth; is there life before death? In the morning sessions each group discusses its own subject, and in the afternoon session the morning's discussion is reconsidered in a metaconversation in which underlying presuppositions are also explored. After dinner there is a discussion with an open theme. This usually turns out to be a political discussion. One night is reserved as the Socratic Evening. On this evening, the participants discuss the usefulness of the conversations in their private lives. Among the results of Socratic Discourse mentioned by its participants are a greater ability to formulate thoughts, greater sensitivity in listening to others, better insight into the structure of arguments, and greater practicality in thinking.

Kessels writes that Nelson, a Neo-Kantian, believed in the direct evidence of truth; "the self-confidence of reason" should be a basic philosophical attitude.[19] In Nelson's view, philosophy is a science, and its aim is to create a justified life and worldview. The method used in Socratic Discourse is "regressive abstraction": an inquiry into people's concrete conceptions that unearths the abstract truths upon which they are based. Through methodical reflection the truth found in concepts can be revealed. Socratic Discourse is the discussion and criticism of the philosophical knowledge possessed by members of the discussion group; this didactic process consolidates formerly "unknown" truths into the philosophers' magic stone: "the truth." Plato's *Meno* is the prototype of Socratic Discourse; the Kantian "a priori" is understood, by Nelson, as the true idea that underlies Plato's words.

The Socratic image envisioned and imitated by Nelson's method differs essentially from Achenbach's conception of the Socratic dialogue. Where in Achenbach's practice "Socrates" himself is and

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remains searching for answers, in the Neo-Kantian group sessions there is one right Socratic answer that needs to be discovered through honest self-exploration in dialogue with the participants of Socratic Discourse.

Kessels admits that Plato's theory of the remembrance of truth is not acceptable for most people today. Nevertheless he claims in his defense of Nelson's and Heckmann's thought that such philosophers as Descartes, Leibniz, Locke, Hume, Kant, Wittgenstein, and Polanyi all occupied themselves with the transformation of occult and confused knowledge into clear and distinct concepts through intuitive knowledge.

* * *

It might be too early to come to more than a tentative conclusion about philosophical practice. Achenbach has pointed out already that it is still in its baby boots, and that timely reflections on it are likely to be changed by lessons learned through further experience.

Nevertheless, it can be said that the unifying and possibly enduring characteristic of the various philosophical practices described here is their didactic intent. A counselee learns from meetings with the philosophical practitioner to question, think about, and comprehend in various—philosophical—ways the self and its problems. The consultation sessions and group meetings are philosophical exercises concerning subjective states of mind, emotions, and other issues connected to the counselee's life. To relate one's subjectively bound consciousness to an objective, analytic, phenomenological or synthetic awareness requires a new way of thinking.

Philosophical practice offers, at least potentially, what philosophy itself was to offer: freedom from the preconceived, the ill-conceived, the prejudiced, and the unconscious.

NOTES

1. Gerd B. Achenbach, *Philosopische Praxis* (Köln: Jürgen Dinter, 1987), 14.
2. Ekkehard Martens, "Sokrates als philosophischer Practiker," in Gerd B. Achenbach, ed., *Philosopische Praxis* (Köln: Jürgen Dinter, 1984), 131–43.
3. Peter Sloterdijk and Gerd Achenbach, "Gespräch über die Lebenskunst, zur Welt zu kommen," *Agora* no. 4 (December 1988): 2.
4. Susan Sontag, *Against Interpretation* (New York: Farrar, Straus & Giroux, 1966), 23.
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14. Hoogendijk, 53.
15. Ad Hoogendijk, *Filosofie voor Managers* (Amsterdam: Veen, 1991).
16. Hans Achterhuis, *Arbeid, een eigenaardige medicijn* (Baarn: Amboboeken, 1984). Id., *De markt van welzijn en geluk* (Baarn: Amboboeken, 1988).
17. Leonard Nelson, *Vom Selbstvertrauen der Vernunft* (Hamburg: Felix Meiner, 1975).
18. Gert de Boer, "Socrates in Willebadessen," *Filosofische Praktijk* no. 6 (November 1989): 21–23.
19. Jos Kessels, "Korte Karakteristiek van het Socratisch gesprek volgens Nelson en Heckmann," and "Een repliek aan Eite Veening," *Filosofische Praktijk* no. 6 (November 1989): 5–12, 16–20.

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Alec Nove

QUESTIONS FOR POSTLIBERTARIANS: REPLY TO FRIEDMAN

Apropos the debate over postlibertarianism,[1] permit a few comments from a nonlibertarian skeptic. My purpose is not to defend Marx, but rather to focus discussion on two basic issues, which have thus far been (in my view) evaded: they relate, first, to property distribution, and second, to the meaning to be attached to the apparently harmless phrase that (negative) freedom equals the right to do anything which does not infringe the freedom of, or do harm to, others.

First, then—property. Suppose a society exists—say Scotland, or El Salvador, or just call it Ruritania—in which a handful of big landlords own the bulk of the land, having inherited it from their forefathers, who either seized it or "privatized" what used to be clan or communal lands. They not only derive from ownership an income incomparably greater than the other inhabitants, they are also in a position of power: they can prevent the other citizens from trespassing, or building a house, or cultivating the soil (in case it disturbs grouse-shooting), or whatever. In some countries the peasantry is reduced to the status of sharecroppers. Quite clearly they are far less free than are the landlords, who, in the cited instances, have done literally nothing themselves to earn or justify possession, other than by the laws of inheri-

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Alec Nove, Centre for Development Studies, Adam Smith Building, University of Glasgow, Glasgow G12 8RT, Scotland, telephone 041-339 8855, telefax 041-330 4940, is a Fellow of the British Academy and author, *inter alia*, of *The Economics of Feasible Socialism Revisited* (Routledge, 1991).

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tance. In Scotland there is a radical theater company which calls itself "7:84": 7 percent of Scots own 84 percent of the property. Just where does libertarian ideology stand on this? I notice that one contributor to the debate referred to the subordinate status of employees as a limitation on freedom, though it is not clear to me what moral he draws.[2]

Second, we all, in a variety of ways, some legitimate, some not, damage the interests of others. Let me draw up a list at random:

1. I successfully court a beautiful maiden, to the dismay of others who have similar intentions.
2. My firm develops a superior product, which drives a competitor into bankruptcy (maybe even to suicide, but there is no need to be melodramatic).
3. My application for a research project succeeds, as a result of which Professor Y's application is rejected.
4. My car occupies a space which prevents Professor Y from parking near the concert hall. It is raining.
5. In any competitive sport the winners harm the losers.
6. The police arrest a suspect.
7. The boss dismisses an employee, for whatever reason.
8. I play loud pop music at night, disturbing a neighbor's sleep.
9. My factory pollutes a river with chemicals, killing fish and poisoning drinking water.
10. Etcetera, etcetera.

It seems to me clear that items 1–6 represent legitimate reasons for freedom to harm others, leaving them no claim for compensation. Some would add 7 too, but there are countries, and laws, that impose limits, require reasons, give rights to severance pay. Tibor Machan approaches the problem but seems unaware that he does so: thus he refers to a right to private property, "be it a toothbrush or a steel factory," which its owner can use "as he or she sees fit without regard to other persons," be he "reckless or prudent"; but "he may not invade the rights of others."[3] Perhaps this was a deliberately question-begging formulation, but in that case why beg the question? With the toothbrush it is clear: the private property in question does not harm others. Even Marx or Bakunin would agree that Friedman or Machan can fully own a toothbrush. But a steelworks could employ a thousand persons. Reckless behavior by the owner could threaten them with serious loss. In the bad old days, a Russian landlord could freely and recklessly gamble away a hundred serfs, his property. Clearly, the steelworkers are not in that sense property, but they are also human. Do postlibertarians regard them as having any rights in the matter that

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affect the owner's freedom to dispose, in effect, of their jobs along with the steelworks?

Then what of 8 and 9? What remedy should a neighbor have against noise pollution? Should he or she be able to call the police, or would this be state intervention, intolerable to postlibertarians? In a pure market model the noise-maker can be paid to desist, but this carries the evident danger that he can then earn an income by threatening to play pop music unless paid, without actually playing it or even intending to. The same is true of 9. He could derive an income just from threatening to poison the river and then refraining from doing so. Some combination of financial penalties and/or prohibitions appear to be required. Or would these be infringements of personal liberty, inconsistent with the "minimalist" state?

For that matter, is a minimalist state consistent with sewers, street lighting, trash collection, public parks and traffic regulations?

I would honestly like to know.

NOTES

1. Jan Narveson, "Libertarianism, Postlibertarianism, and the Welfare State: Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 45–82; Antony Flew, "Dissent from 'The New Consensus': Reply to Friedman," ibid., 83–96; Tibor R. Machan, "The Right to Private Property: Reply to Friedman," ibid., 97–106; Donald N. McCloskey, "Minimal Statism and Metamodernism: Reply to Friedman," ibid., 107–112; Jeffrey Friedman, "After Libertarianism: Rejoinder to Narveson, McCloskey, Flew, and Machan," ibid., 113–52.
2. Richard Cornuelle, "The Power and Poverty of Libertarian Thought," ibid., 1–10.
3. Machan, 98.

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Jeffrey Friedman

POSTLIBERTARIANISM IS NOT LIBERTARIANISM: REJOINDER TO NOVE

This is not a rejoinder in the usual sense, since I agree with the thrust of Nove's argument. I must have failed to explain clearly that postlibertarianism radically departs from libertarianism precisely in order to take account of such questions as Nove raises: questions the left has been asking for a century and a half that, for the most part, free-marketeers have yet to answer satisfactorily. Perhaps the length and complexity of the debate over postlibertarianism[1] and the critique of libertarianism out of which it grew[2] obscured the fundamental issues. Nove's Reply presents those issues with exemplary clarity.

One such issue, which I called the contradiction in laissez-faire libertarianism,[3] is uncovered when libertarianism is contrasted to egoism. The egoist escapes the contradiction: denying the inherent worth of all human beings, he can coerce people who get in his way without compunctions. Libertarians, however, are not egoists: all libertarian foundational doctrines—whether based on contract, natural rights, or natural law—are rooted in the equal respect due all human beings. Libertarians think all individuals should be accorded equal freedom from coercion. The contradiction occurs when libertarians apply this egalitarian principle inconsistently. Once we limit any one individual's egoistic freedom to coerce another, only some countervailing concern can stop our commitment to equal individual freedom from extending

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first to equality of opportunity and then to equality of results. In this sense, libertarian egalitarianism leads logically (if not practically) to socialism.[4] It is tendentious to limit a concern for others' liberty to their freedom to dispose of property acquired in Nozickean fashion; why not also be concerned with the denials of freedom Nove discusses under the rubric of property distribution?

My libertarian critics argued that such denials of freedom are not *really* coercive, because only the freedom to enjoy Nozickean property is *true* freedom. But, of course, there is no "true" definition of anything. There are only definitions that obscure and definitions that reveal. The libertarians' narrow definition of freedom disguises the inconsistency with which they apply their egalitarian doctrine; Nove asks, in effect, why our respect for other human beings should be narrowly focused on their property "rights." Libertarians beg the question. Nove's queries show that the liberal left is (philosophically) more consistent in its dedication to equal individual freedom than are libertarians.

Nove's eighth and ninth examples demand particular attention. They point out that, even under the narrow libertarian definition of coercion, we cannot help but infringe upon each other's freedom constantly, through the externalities produced by almost all physical activities.[5] Libertarians can only avoid opposing human life itself as an infringement of individual freedom by granting an exemption to human activities that, although coercive, are not *harmful*.

But if only harmful coercion should be proscribed, it seems that harm, not coercion, is the real evil. Why, then, should coercionless but harmful activities be allowed?[6] These include many activities libertarianism sanctions, some of which Nove describes in examples 1 to 5.

I wonder, though, why Nove joins libertarians in sanctioning such (arguably) coercionless but harmful activities. It could be that Nove harbors a liberal—albeit not a Nozickean libertarian—opposition to paternalistic intervention by the state into such matters as love affairs. This would be an instance of the tension in negative liberalism (a category that includes both Nozickean libertarians and left liberals) between the original liberal concern for equal human well-being and the very different, sometimes contradictory concern that each human being make his or her own decisions. But if antipaternalism explained why Nove exempts certain activities from state supervision, why would he include in this category example 2 (competition drives an entrepreneur to bankruptcy or suicide)? While a philosopher of laissez-faire would do so because of the question-begging libertarian equation

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of freedom with private property ownership, Nove's discussion of property inequality shows that he does not make this error. Apparently, then, Nove is not suggesting that one firm has a "right" to bankrupt another, regardless of the consequences—any more than he believes that a firm has a right to fire employees at will, or a Russian landholder the right to sell "his" serfs. Nove must instead be saying that the consequences of prohibiting interfirm rivalry even to the point of bankruptcy—like the consequences of prohibiting competition among suitors, scholars, automobile drivers, or athletes—would be, at least over the long run, worse than the consequences of letting such rivalries proceed. If so, then Nove's real concern is for people's welfare, not their freedom.

Most libertarians share this concern too, even though (like liberals generally) they overlay it with doctrines of emancipation and individual choice that obscure the underlying motive. This explains the paradox that while most libertarians and "classical liberals" (including not only such economists as Hayek and Friedman but such philosophers as Nozick, Rand, and Rothbard)[7] are "converted" to libertarian policy positions by free-market economics, preeminently of the Austrian and Chicago varieties, in the end they embrace an ideology in which (narrowly defined) freedom is such a pre-emptive absolute that the results of free-market economic analysis become irrelevant. Libertarians begin by attempting to demonstrate that capitalism is *good for people* because it brings prosperity; but their doctrinal destination, libertarianism, has no room for such demonstrations, since the doctrine justifies capitalism as an *intrinsically* good embodiment of freedom, irrespective of its consequences.

My only quarrel with Nove is that similarly, he seems to begin with empathy for the plight of the poor, but sometimes embraces conceptions of liberation from oppression that may not, in practice, alleviate that plight. (The proper question is not whether steel workers have a *right* to severance pay, but whether imposing such an obligation on steel manufacturers will, in the long run, serve the welfare of the workers, potential workers, and consumers.) As with libertarians, Nove's initial concern for people's well-being mutates into a preoccupation with power: Who has the right to make decisions that affect an individual—the individual herself, or extra-individual authorities (states, employers, landowners, the rich, etc.)?

Thus, while the argument between libertarians and leftists should be over the impact of various forms of social organization on people's well-being, it instead degenerates into a scholastic contest over the

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true essence of terms like liberty. This debate says little or nothing about either the bases of human welfare or the social arrangements conducive to it. Nove's questions point out the narrowness of libertarianism, but if the discussion stops there we will continue to be mired in a sterile debate about the intrinsic justice of alternative distributions of decisionmaking authority, while the effects of those distributions on human life are subordinated.

I coined the term *postlibertarianism* to suggest a direction that might be truer to both left liberals' empathetic starting point and libertarians' awareness of practical constraints on government activity. Postlibertarian scholarship puts aside abstract questions of liberty and equality in favor of exploring the effects of various feasible distributions of power and goods on people's welfare. One must allow at least the possibility that these investigations might support minimal-state policy conclusions. While Nove's objections to laissez-faire policies based on libertarian philosophy are well taken, such policies still might follow from responsible research into the causes of social problems. The difficulty for postlibertarians who hope to justify libertarian policies is not figuring out how to lay sewers and pave streets—activities that have often been undertaken by private enterprise[8]—so much as it is deriving from the particular cases in which private arrangements may be preferable to public ones the generalization that the market and independent sectors are *always* preferable to government action. Until now, it has been libertarian philosophy that has provided this overarching generalization. Postlibertarianism means attempting to see if there is an alternative, consequentialist rationale for such a position. (It is unlikely that such a rationale could depend on economic arguments alone, since there is so much more to human well-being than prosperity.)

Perhaps such a rationale will not be found.[9] Perhaps postlibertarianism will lead to a cultural rather than a programmatic critique of the status quo.[10] But in any case, if we are to do justice to the humanitarian concerns from which both libertarians and their critics begin, we ought to stop gnawing on the question of whether it violates the freedom of 93 percent of the Scots for the remainder to own 84 percent of the property, and turn instead to the question of what alternative system—if any—will work to their long-term benefit.

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NOTES

1. Jan Narveson, "Libertarianism, Postlibertarianism, and the Welfare State: Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 45–82; Antony Flew, "Dissent from 'The New Consensus': Reply to Friedman," ibid., 83–96; Tibor R. Machan, "The Right to Private Property: Reply to Friedman," ibid., 97–106; Donald N. McCloskey, "Minimal Statism and Metamodernism: Reply to Friedman," ibid., 107–112; Jeffrey Friedman, "After Libertarianism: Rejoinder to Narveson, McCloskey, Flew, and Machan," ibid., 113–52.
2. Jeffrey Friedman, "The New Consensus: I. The Fukuyama Thesis," CRITICAL REVIEW 3, nos. 3–4 (Summer-Fall 1989): 373–410; idem, "The New Consensus: II. The Democratic Welfare State," CRITICAL REVIEW 4, no. 4 (Fall 1990): 633–708; idem, "Postmodernism vs. Postlibertarianism," CRITICAL REVIEW 5, no. 2 (Spring 1991): 145–58.
3. Friedman, "After Libertarianism," 115.
4. Cf. Richard Ashcraft, "Liberalism and the Problem of Poverty," CRITICAL REVIEW 6, no. 4 (Fall 1992): 493–516.
5. I try to show the failure of Murray Rothbard's attempt to solve these conundrums in my "Politics or Scholarship?" CRITICAL REVIEW 6, nos. 2–3 (Spring-Summer 1993): 429–45.
6. Of course, one might counter that the harm principle is secondary to the ban on coercion, and only comes into play as an adjunct to the latter in order to distinguish among the vast array of human activities that are coercive. Thus, while it may be that in choosing which coercive activities to prohibit, harmfulness will be the deciding factor, one might contend that a harmful activity that is *not* coercive should not be prohibited. But this rejoinder fails, for it gives us no reason to supplement the coercion criterion in the first place. It is only because of the harm to human well-being that would be caused by that criterion that we need to find a way to distinguish among coercive activities to begin with. In other words, if the harm principle did not *override* the coercion principle, we would have to accept that human life on earth, being inherently coercive, is inherently evil. Unless the immense harm done by extinguishing all human life trumps the evil of coercion, we would have to exterminate humanity so as to end coercion. If we fail to do so, it can only be because we think that harm is more important than coercion. But in that case, there is no philosophical reason not to prohibit harmful but noncoercive activites—although there may, of course, be practical reasons.
7. Friedman, "The Democratic Welfare State," 662–64.
8. See e.g. Stephen Davies, "Edwin Chadwick and the Genesis of the English Welfare State," CRITICAL REVIEW 4, no. 4 (Fall 1990): 523–544, at 532.
9. Friedman, "The Democratic Welfare State," 666–83.
10. Ibid., 683–90.

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